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Committee on the Internal Market and Consumer Protection

2011/0438(COD)

12.7.2012

AMENDMENTS 764 - 1061

Draft report
Marc Tarabella
(PE483.468v01-00)

on the proposal for a directive of the European Parliament and of the Council
on public procurement

Proposal for a directive
(COM(2011)0896 – C7-0006/2012 – 2011/0438(COD))

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PE492.859v01-00

EN

United in diversity

EN

Amendment 764
Cornelis de Jong

Proposal for a directive
Article 28 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Contracting authorities **shall not** reveal to the other participants solutions proposed **or other** confidential information communicated by a candidate participating in the **dialogue** without its agreement. Such agreement shall **not take the form of a general waiver but shall** be given with reference to the intended communication of **specific solutions or other specific** confidential information.

Amendment

Contracting authorities **have the possibility, by means of an agreement in the form of a general waiver, to** reveal to the other participants solutions proposed **by a candidate participating in the negotiations. Other** confidential information communicated by a candidate participating in the **negotiations, shall not be revealed** without its agreement. Such agreement shall be given with reference to the intended communication of **this** other confidential information.

Or. en

Amendment 765
Marian Harkin

Proposal for a directive
Article 28 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Contracting authorities shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific solutions or other specific confidential information.

Amendment

Contracting authorities shall **behave with utmost good faith and shall** not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific solutions or other specific confidential information.

Or. en

Amendment 766
Frank Engel, Konstantinos Poupakis

Proposal for a directive
Article 28 – paragraph 3 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

Non-compliance with subparagraph 3 of this paragraph shall render the contracting entity liable.

Or. fr

Amendment 767
Heide Rühle

Proposal for a directive
Article 28 – paragraph 5

Text proposed by the Commission

Amendment

5. The contracting authority ***shall*** continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

5. The contracting authority ***may either set a limited timeframe for the dialogue, which figures in the contract notice or*** continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

Or. en

Amendment 768
Frank Engel

Proposal for a directive
Article 28 – paragraph 5

Text proposed by the Commission

Amendment

5. The contracting authority ***shall*** continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

5. The contracting authority ***may***:

- either stipulate a limited period for the dialogue, which shall be given in the contract notice;

- or continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

Or. fr

Amendment 769

Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

Proposal for a directive

Article 28 – paragraph 6 - subparagraph 1 a (new)

Text proposed by the Commission

Amendment

These tenders may be clarified, specified and fine-tuned at the request of the contracting authority. However, such clarification, specification, fine-tuning or additional information may not involve changes to the essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect.

Or. en

Justification

Streamlining the procurement process.

Amendment 770

Heide Rühle

Proposal for a directive

Article 28 – paragraph 7 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

At the request of the contracting authority, the tenderer identified as having submitted the most economically advantageous tender may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender or of the call for tender and does not risk distorting competition or causing discrimination.

Or. en

Amendment 771
Jürgen Creutzmann

Proposal for a directive
Article 28 – paragraph 7 – subparagraph 2

Text proposed by the Commission

Amendment

Where necessary, in order to finalise financial commitments or other terms of the contract, the contracting authority may negotiate the final terms of the contract with the tenderer identified as having submitted the most economically advantageous tender in accordance with Article 66(1)(a) provided such negotiations do not have the effect of modifying essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document and does not risk distorting competition or causing discrimination.

At the request of the contracting authority, the tenderer identified as having submitted the most economically advantageous tender in accordance with Article 66(1) (a) may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of modifying essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document and does not risk distorting competition or causing discrimination.

Or. en

Justification

The proposed new wording is dangerous as it introduces the possibility for the contracting

authorities to put a pressure on the price towards the tenderer identified as having submitted the most economically advantageous tender. The existing wording of directive 2004/18/EC (art. 29 par. 7) is therefore more appropriate, with slight adaptations to the terminology of the Commission proposal.

Amendment 772

Frank Engel, Anna Maria Corazza Bildt

Proposal for a directive

Article 28 – paragraph 8

Text proposed by the Commission

8. The contracting authorities **may** specify prizes or payments to the participants in the dialogue.

Amendment

8. The contracting authorities **shall** specify prizes or payments to the participants in the dialogue **on terms laid down by the contract**.

Or. fr

Amendment 773

Marian Harkin

Proposal for a directive

Article 28 – paragraph 8

Text proposed by the Commission

8. The contracting authorities **may** specify prizes or payments to the participants in the dialogue.

Amendment

8. The contracting authorities **shall** specify prizes or payments to the participants in the dialogue.

Or. en

Amendment 774

Jürgen Creutzmann

Proposal for a directive

Article 28 – paragraph 8

Text proposed by the Commission

8. The contracting authorities **may** specify

Amendment

8. The contracting authorities **shall** specify

prizes or payments to the participants in the dialogue.

prizes or payments to the participants in the dialogue.

Or. en

Justification

Time and cost necessary for participating in negotiated procedures following the submission of the initial tender are difficult/ impossible to estimate correctly. Consequently, the perspective of receiving some compensation for additional efforts is likely to attract contractors who would otherwise prefer to abstain from participation. This is likely to be beneficial for both competition and the quality of the works.

Amendment 775
Marc Tarabella

Proposal for a directive
Article 29

Text proposed by the Commission

Amendment

Article 29

deleted

Innovation Partnership

1. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice with a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works provided that they correspond to the agreed performance levels and costs.

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, possibly up to the manufacturing of the supply or the provision of the services. It shall provide for intermediate targets to be attained by the partner and provide for payment of the remuneration in appropriate instalments. Based on those targets, the contracting authority

may decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that it has acquired the relevant intellectual property rights.

3. The contract shall be awarded in accordance with the rules for a competitive procedure with negotiation set out in Article 27.

In selecting candidates, contracting authorities shall pay particular attention to criteria concerning the tenderers' capacity and experience in the field of research and development and of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.

Only those economic operators invited by the contracting authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).

4. The structure of the partnership and, in particular, the duration and value of the different phases shall reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The value and duration of a contract for the purchase of the resulting supply, service or works shall remain within appropriate limits, taking into account the need to recover the costs, including those incurred in developing an innovative solution, and to achieve an adequate profit.

Contracting authorities shall not use innovation partnerships in such a way as to prevent, restrict or distort competition.

Or. fr

Amendment 776
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 29

Text proposed by the Commission

Amendment

Article 29

deleted

Innovation partnership

1. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice with a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works provided that they correspond to the agreed performance levels and costs.

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, possibly up to the manufacturing of the supply or the provision of the services. It shall provide for intermediate targets to be attained by the partner and provide for payment of the remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that it has acquired the relevant intellectual property rights.

3. The contract shall be awarded in accordance with the rules for a

competitive procedure with negotiation set out in Article 27.

In selecting candidates, contracting authorities shall pay particular attention to criteria concerning the tenderers' capacity and experience in the field of research and development and of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.

Only those economic operators invited by the contracting authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).

4. The structure of the partnership and, in particular, the duration and value of the different phases shall reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The value and duration of a contract for the purchase of the resulting supply, service or works shall remain within appropriate limits, taking into account the need to recover the costs, including those incurred in developing an innovative solution, and to achieve an adequate profit.

Contracting authorities shall not use innovation partnerships in such a way as to prevent, restrict or distort competition.

Or. en

Amendment 777

Malcolm Harbour, Edvard Kožušník, Frank Engel, Jürgen Creutzmann

Proposal for a directive

Article 29 – paragraph 1

Text proposed by the Commission

1. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice with a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works provided that they correspond to the agreed performance levels and costs.

Amendment

1. In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice with a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the agreed performance levels and costs. ***The contract setting up the innovation partnership shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).***

Or. en

Justification

Streamlining the procurement process and improving the new innovation partnerships procedure.

Amendment 778

Frank Engel

Proposal for a directive

Article 29 – paragraph 2– subparagraphs 1 a and 1 b (new)

Text proposed by the Commission

Amendment

Intellectual property rights shall be granted only for the purposes of enabling the contracting authority to build on the outcome of the preceding phases, in accordance with the aim of the partnership, in the event of a change of

contractor during the procedure, in order to limit the impact of the acquisition of rights as regards the undertaking which has been replaced.

Intellectual property rights clauses shall clearly define the rights and obligations of all parties.

Or. fr

Amendment 779

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive

Article 29 – paragraph 2

Text proposed by the Commission

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, ***possibly up to*** the manufacturing of the supply or the provision of the services. ***It shall provide for*** intermediate targets to be attained by the partner and provide for ***payment of the*** remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that it ***has acquired the relevant intellectual property rights.***

Amendment

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, ***which may include*** the manufacturing of the supply, or the provision of the services ***or the completion of the works.*** ***The partnership shall set*** intermediate targets to be attained by the partner and provide for remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, provided that ***the contracting authority has indicated in the procurement documents under which conditions it may make use of this discretion to terminate the partnership.***

Or. en

Justification

Streamlining the procurement process and improving the innovation partnerships procedure.

Amendment 780
Marian Harkin

Proposal for a directive
Article 29 – paragraph 2

Text proposed by the Commission

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, possibly up to the manufacturing of the supply or the provision of the services. It shall provide for intermediate targets to be attained by the partner and provide for payment of the remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases, ***provided that it has acquired the relevant intellectual property rights.***

Amendment

2. The partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, possibly up to the manufacturing of the supply or the provision of the services. It shall provide for intermediate targets to be attained by the partner and provide for payment of the remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each stage to terminate the partnership and launch a new procurement procedure for the remaining phases.

Or. en

Justification

Clarifications should be given on the way how to manage this new procedure in order to encourage innovation and avoid tailor-made selection1 how to value intellectual property rights? (what will be the scale of the commercial market?)2 too vague definition3 awarding authorities will increasingly engage (expert) private market players instead of making use of in-house departments4 to clarify the definition of the procedure5 with whom will the intellectual property rights rest?

Amendment 781
Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive
Article 29 – paragraph 2 a (new9)

Text proposed by the Commission

Amendment

***2a. The contract shall be awarded according to this paragraph:
In the procurement documents,***

contracting authorities shall indicate which elements define the minimum requirements to be met. The indications shall be sufficiently precise so as to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.

The minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice is sent, or where a prior information notice is used as a means of calling for competition, 30 days from the date on which the invitation to confirm interests is sent. The minimum time limit for the receipt of initial tenders shall be 30 days from the date on which the invitation is sent.

Contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted, to improve the content to ensure that these tenders better fulfil the award criteria specified in the procurement documents.

During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. To that end, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall take particular care to ensure that all tenderers, whose tenders have not been eliminated, are informed in writing of any changes to the technical specifications of other procurement documents other than those setting out the minimum requirements, providing sufficient time to allow such tenderers to modify and re-submit amended tenders following these changes.

In accordance with Article 18, contracting authorities shall not reveal to the other participants confidential information communicated by a candidate participating in the negotiations without its agreement. Such agreement shall not

take the form of a general waiver but shall be given with reference to the intended communication of specific information.

The minimum requirements and the award criteria shall not be subject to negotiations.

Once the deadline for submitting tenders has expired, and before proceeding to their examination, contracting authorities may specify a weighting attached to the subheadings of an award criterion defined in advance in accordance with Article 66(5), provided that:

-the contract award criteria set out in the contract documents or the contract notice are unaltered;

(a) this does not include new elements which would have affected the preparation of the tenders;

(b) this does not give rise to discrimination against any one of the tenderers.

Innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated, by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or in the procurement documents, the contracting authority shall clearly indicate whether it will use this option.

Or. en

Justification

Key AM on innovation partnerships tying the procedure to the competitive procedure with negotiation, but allowing for more negotiating possibilities in the case of innovation partnerships, given that these are required for the types of procurement which will fall under the new procedure, which explains why only certain most important parts of Article 27 to ensure transparency and fairness apply.

Amendment 782

Marian Harkin

Proposal for a directive

Article 29 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

1. The contract shall be awarded in accordance with the rules for a competitive procedure with negotiation set out in Article 27.

deleted

Or. en

Amendment 783

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive

Article 29 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

In selecting candidates, contracting authorities shall pay particular attention to criteria concerning the **tenderers'** capacity **and experience** in the field of research and development and of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.

In selecting candidates, contracting authorities shall pay particular attention to criteria concerning the **candidates'** capacity in the field of research and development and of developing innovative solutions. They may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Article 64.

Or. en

Justification

Improvements to the innovation partnerships procedure making it more accessible to innovative SMEs in particular.

Amendment 784

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive
Article 29 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Only those economic operators invited by the contracting authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions. ***The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1)(a).***

Amendment

Only those economic operators invited by the contracting authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions.

Or. en

Justification

Already mentioned in previous AMs on innovation partnerships.

Amendment 785
Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive
Article 29 – paragraph 4 – subparagraph 1

Text proposed by the Commission

The structure of the partnership and, in particular, the duration and value of the different phases shall reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The value ***and duration of a contract for the purchase of the resulting supply, service or works shall remain within appropriate limits, taking into account the need to recover the costs, including those incurred in developing an innovative solution, and to achieve an adequate profit.***

Amendment

The ***contracting authority shall ensure that the*** structure of the partnership and, in particular, the duration and value of the different phases shall reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The ***estimated*** value of ***supplies, services*** or works shall ***not be disproportionate in relation to the investment required for their development.***

Justification

This AM ensures that the use of innovation partnerships is appropriate to the core objective behind this new procedure and that they deliver value for money.

Amendment 786

Malcolm Harbour, Edvard Kožušník, Frank Engel

Proposal for a directive

Article 29 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

Contracting authorities shall not use innovation partnerships in such a way as to prevent, restrict or distort competition. ***deleted***

Justification

Already covered above in another AM on innovation partnerships.

Amendment 787

Sari Essayah, Sirpa Pietikäinen

Proposal for a directive

Article 29 a (new)

Text proposed by the Commission

Amendment

Article 29 a

A service voucher system

In arranging public services contracting authorities may use a service voucher system in order to give customers freedom to choose the service provider. A contracting authority defines the value of the service voucher as well as services in which it can be used and the customers who may use it.

A contracting authority may set the requirements which the service provider has to meet in order to be included in the service voucher system. These requirements must be non-discriminatory and proportionate to the subject matter of the service. All service providers that meet the requirements must be included in the system. The list of service providers must be made publicly available.

A contracting authority may also choose the service providers to be included in the service voucher system through a procedure provided in this Directive.

A customer may select any service provider in the service voucher system or choose not to use the system.

Or. en

Amendment 788
Marc Tarabella

Proposal for a directive
Article 30 – paragraph 1

Text proposed by the Commission

1. Member States may provide that contracting authorities may award public contracts by a negotiated procedure without prior publication only in the cases laid down in paragraphs (2) to (5).

Amendment

1. Member States may provide that contracting authorities may award public contracts by a negotiated procedure without prior publication only in the cases laid down in paragraphs (2) to (5).
Contracting authorities may not use the negotiated procedure without advertising for the sole purpose of negotiating the price of works, supplies and services.

Or. fr

Amendment 789
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 30 – paragraph 1

Text proposed by the Commission

1. Member States may provide that contracting authorities may award public contracts by a negotiated procedure without prior publication **only in the cases laid down in paragraphs (2) to (5)**.

Amendment

1. ***In the specific cases and circumstances laid down in paragraphs (2) to (5)***, Member States may provide that contracting authorities may award public contracts by a negotiated procedure without prior publication. ***In any other cases, the use of this procedure is not allowed.***

Or. en

Justification

Streamlining the procurement process.

Amendment 790
Raffaele Baldassarre, Lara Comi

Proposal for a directive
Article 30 – paragraph 1

Text proposed by the Commission

1. Member States may provide that contracting authorities may award public contracts by a negotiated procedure without prior publication only in the cases laid down in paragraphs (2) to (5).

Amendment

1. Member States may provide that contracting authorities may award public contracts by a negotiated procedure without prior publication only in the cases laid down in paragraphs 2 to 5 ***where the value of the contract is not more than EUR 500 000 in the case of public works contracts and not more than EUR 100 000 in the case of public service contracts.***

Or. it

Amendment 791
Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

The negotiated procedure without prior publication may be **foreseen** for public works contracts, public supply contracts and public service contracts in any of the following cases:

Amendment

The negotiated procedure without prior publication may be **used** for public works contracts, public supply contracts and public service contracts in any of the following cases:

Or. en

Justification

Streamlining the procurement process.

Amendment 792

Heide Rühle

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a **restricted** procedure, provided that the initial conditions of the contract are not substantially altered **and that a report is sent to the Commission or the national oversight body designated according to Article 84 where they so request.**

Amendment

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure, **a restricted procedure** or a **negotiated** procedure **with prior publication**, provided that the initial conditions of the contract are not substantially altered.

Or. en

Justification

Far too bureaucratic, one purpose of this revision was to simplify in order to create more cost-effectiveness.

Amendment 793

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered **and that a report is sent to the Commission or the national oversight body designated according to Article 84 where they so request.**

Amendment

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not altered.

Or. de

Justification

The unclear wording of the reporting obligation would bring about needless red tape and disproportionate obligations for contracting authorities, given, above all, that there is to be only one national body.

Amendment 794

Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Anna Maria Corazza Bildt

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission or the national **oversight** body **designated according to Article 84** where they so request.

Amendment

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission or the **competent** national body where they so request.

Or. en

Justification

Proposed amendment is connected with amendments proposed to the Article 84

Amendment 795

Sergio Gaetano Cofferati

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not *substantially* altered *and that a report is sent to the Commission or the national oversight body designated according to Article 84 where they so request.*

Amendment

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not altered.

Or. it

Amendment 796

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered *and that a report is sent to the Commission or the national oversight body designated according to Article 84 where they so request.*

Amendment

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered.

Or. en

Amendment 797

Peter Simon

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the *Commission or the national oversight body designated according to Article 84 where they so request*.

Amendment

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not altered.

Or. de

Amendment 798

Jürgen Creutzmann

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the *Commission or the national oversight body designated according to Article 84 where they so request*.

Amendment

(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission.

Or. en

Amendment 799

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) where the aim of the procurement is the creation or obtention of a work of art;

(b) when for artistic reasons the contract may be awarded only to a particular economic operator;

Or. en

Justification

Limiting use of the negotiated procedure without prior publication only to work of art seems to be too narrow approach. Public contract in question may not refer to work of art but without a doubt have artistic nature (i.e. artistic performance, concert).

Amendment 800

Sergio Gaetano Cofferati

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point c – point i

Text proposed by the Commission

Amendment

(i) the absence of competition for technical reasons;

deleted

Or. it

Amendment 801

Heide Rühle

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point c – point i

Text proposed by the Commission

Amendment

(i) the absence of competition for technical reasons;

(i) the absence of competition for technical *or legal* reasons;

Or. en

Amendment 802
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 30 – paragraph 2 – subparagraph 1 – point c – point i

Text proposed by the Commission

Amendment

(i) the absence of competition for technical reasons;

(i) the absence of competition for technical *or legal* reasons;

Or. en

Amendment 803
Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer

Proposal for a directive
Article 30 – paragraph 2 – subparagraph 1 – point c – point i

Text proposed by the Commission

Amendment

i) the absence of competition for technical reasons;

i) the absence of competition for technical *or legal* reasons;

Or. de

Justification

This addition will also cover instances where a contracting authority needs a building in a specific location and the owner will sell only if he is given a works contract.

Amendment 804
Peter Simon

Proposal for a directive
Article 30 – paragraph 2 – subparagraph 1 – point c – point i

Text proposed by the Commission

Amendment

i) the absence of competition for technical reasons;

i) the absence of competition for *legal or* technical reasons;

Or. de

Amendment 805

Marc Tarabella

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point c – point iii

Text proposed by the Commission

iii) the protection of other exclusive rights.

Amendment

iii) the protection of other exclusive rights,
including priority vis-à-vis a property site.

Or. fr

Amendment 806

Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point c – paragraph 1

Text proposed by the Commission

This exception only applies when *no reasonable alternative or substitute exists* and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

Amendment

This exception only applies when the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

Or. de

Amendment 807

Evelyne Gebhardt

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point c – paragraph 1

Text proposed by the Commission

This exception only applies when *no reasonable alternative or substitute exists* and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

Amendment

This exception only applies when the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

Amendment 808

Heide Rühle

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point d

Text proposed by the Commission

(d) insofar as is strictly necessary where, for reasons of extreme urgency **brought about by force majeure**, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

Amendment

(d) insofar as is strictly necessary where, for reasons of extreme urgency **and which has not been foreseeable by the contracting authority**, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

Or. en

Amendment 809

Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point d

Text proposed by the Commission

(d) insofar as is strictly necessary where, for reasons of extreme urgency **brought about by force majeure**, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

Amendment

(d) insofar as is strictly necessary where, for reasons of extreme urgency, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

Or. en

Justification

Extreme urgency should not be limited only force majeure.

Amendment 810

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point d

Text proposed by the Commission

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by *force majeure*, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

Amendment

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by *events unforeseeable by the contracting authority*, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

Or. en

Justification

Streamlining the procurement process.

Amendment 811

Peter Simon

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point d

Text proposed by the Commission

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by *force majeure*, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting

Amendment

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by *events unforeseeable for the contracting authority*, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any

authority;

event be attributable to the contracting authority;

Or. de

Amendment 812

Marc Tarabella

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) where an economic operator takes the initiative to propose an innovation partnership to a contracting authority with a view to establishing a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the agreed performance levels and costs.

Or. fr

Amendment 813

Heide Rühle

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 2 – indent 1

Text proposed by the Commission

Amendment

– it is irregular or unacceptable, *and*

– it is irregular or unacceptable, *or*

Or. en

Amendment 814

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 30 – paragraph 3 – point b

Text proposed by the Commission

(b) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the duration of such contracts as well as that of recurrent contracts shall not, as a general rule, exceed **three** years;

Amendment

(b) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the duration of such contracts as well as that of recurrent contracts shall not, as a general rule, exceed **four** years;

Or. en

Amendment 815
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 30 – paragraph 4

Text proposed by the Commission

4. The negotiated procedure without prior publication may be **foreseen** for public service contracts, where the contract concerned follows a design contest organised in accordance with this Directive and is to be awarded, under the applicable rules, to the winner or one of the winners of the design contest; in the latter case, all winners must be invited to participate in the negotiations.

Amendment

4. The negotiated procedure without prior publication may be **used** for public service contracts, where the contract concerned follows a design contest organised in accordance with this Directive and is to be awarded, under the applicable rules, to the winner or one of the winners of the design contest; in the latter case, all winners must be invited to participate in the negotiations.

Or. en

Justification

The negotiated procedure is a procedure to be used, not just foreseen.

Amendment 816
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 30 – paragraph 5 – subparagraph 1

Text proposed by the Commission

The negotiated procedure without prior publication may be *foreseen* for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to which the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to a procedure in accordance with Article 24(1). The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.

Amendment

The negotiated procedure without prior publication may be *used* for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to which the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to a procedure in accordance with Article 24(1). The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.

Or. en

Justification

ibid.

Amendment 817
Raffaele Baldassarre, Lara Comi

Proposal for a directive
Article 30 – paragraph 5 – subparagraph 1

Text proposed by the Commission

The negotiated procedure without prior publication may be *foreseen* for new *works or* services consisting in the repetition of similar *works or* services entrusted to the economic operator to which the same contracting authorities awarded an original contract, provided that such *works or* services are in conformity with a basic

Amendment

The negotiated procedure without prior publication may be *followed* for new services consisting in the repetition of similar services entrusted to the economic operator to which the same contracting authorities awarded an original contract, provided that such services are in conformity with a basic project for which

project for which the original contract was awarded according to a procedure in accordance with Article 24(1). The basic project shall indicate the extent of possible additional *works or* services and the conditions under which they will be awarded.

the original contract was awarded according to a procedure in accordance with Article 24(1). The basic project shall indicate the extent of possible additional services and the conditions under which they will be awarded.

Or. it

Amendment 818

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 30 – paragraph 5 – subparagraph 2

Text proposed by the Commission

As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent *works or* services shall be taken into consideration by the contracting authorities when they apply Article 4.

Amendment

As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent services shall be taken into consideration by the contracting authorities when they apply Article 4.

Or. it

Amendment 819

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 30 – paragraph 5 – subparagraph 3

Text proposed by the Commission

This procedure may be used only during the *three years* following the conclusion of the original contract.

Amendment

This procedure may be used only during the *two years* following the conclusion of the original contract.

Or. it

Amendment 820

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 30 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Contracting authorities may combine elements of the open procedure with the negotiated procedure.

Or. de

Justification

There should be the possibility of carrying out a one-step award procedure. That would give the contracting authority greater flexibility, enabling it to combine elements of the open procedure with those of the negotiated procedure. Under such a one-step procedure, the contracting authority should be able, as it is under the open procedure, to receive tenders from bidders immediately and negotiate on them

Amendment 821

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 30 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. The negotiated procedure without prior publication may be used where the contracting authority considers that the contract should be awarded to a public service mutual in order to facilitate:

- (i) the integration of public sector employees into the private sector; or,***
- (ii) the diversity of suppliers in the market covered by that public contract.***

This exception only applies where the contract is awarded:

- (i) to an entity in anticipation that it will become a public service mutual, once the individuals concerned leave their positions of employment in the public***

sector and the entity begins to supply services; or,

(ii) within the period of 3 years beginning with the date on which the public service mutual first begins to supply any services.

Or. en

Amendment 822
Sergio Gaetano Cofferati

Proposal for a directive
Article 30 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

If a contracting authority decides, under this Article, to make use of the negotiated procedure without prior publication, it shall provide the supervisory body referred to in Article 84 with a detailed report stating the reasons for that choice and containing the tender documents and related information and, should it elect to follow a negotiated procedure without prior publication under point (a), the tender documents from the previous call to tender.

Or. it

Amendment 823
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 31 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

The term of a framework agreement shall not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

deleted

Justification

Amendment 824

Heide Rühle

Proposal for a directive

Article 31 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The term of a framework agreement shall not exceed **four** years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

Amendment

The term of a framework agreement shall not exceed **six** years, save in exceptional cases duly justified, in particular by the subject of the framework agreement. ***The term of a framework agreement regarding the maintenance is based on the lifecycle of the work or supply.***

Or. en

Justification

To solve problems like the maintenance contracts of elevators.

Amendment 825

Frank Engel, Constance Le Grip

Proposal for a directive

Article 31 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The term of a framework agreement shall not exceed four years, save in **exceptional** cases **duly justified, in particular by the subject of the framework agreement.**

Amendment

The term of a framework agreement shall not exceed four years, save in cases **where it concerns work that will take longer than four years to carry out or where a longer period is justified by the need for economic operators to make investments for which the amortisation period is longer than four years or which are linked to the recruitment of suitable staff to perform the contract or the training of**

staff to perform the contract.

Or. fr

Amendment 826
Vicente Miguel Garcés Ramón

Proposal for a directive
Article 31 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The term of a framework agreement shall not exceed *four* years, *save* in exceptional cases *duly justified*, in particular by the subject of the framework agreement.

Amendment

The term of a framework agreement shall not exceed *two* years, *and may, where duly justified, reach four years; agreements may run for even longer in* exceptional cases *which are duly justified*, in particular by the subject of the framework agreement.

Or. es

Amendment 827
Sirpa Pietikäinen

Proposal for a directive
Article 31 – paragraph 1 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

In framework agreements on services the term of the framework agreement may exceed four years when the best interest of the end user, the nature of investment or the other aspects of the nature of the service so requires.

Or. en

Amendment 828
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 31 – paragraph 2

Text proposed by the Commission

Amendment

2. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and paragraphs 3 and 4.

deleted

Those procedures may be applied only between those contracting authorities clearly identified for this purpose in the call for competition or the invitation to confirm interest and those economic operators originally party to the framework agreement.

Contracts based on a framework agreement may under no circumstances make substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.

Contracting authorities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

Or. en

Justification

Amendment 829
Othmar Karas

Proposal for a directive
Article 31 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Increasing the number of contracting authorities which may make use of a framework agreement shall be permissible, by way of exception, where the following conditions are met:

(a) the framework agreement has been concluded by a central procurement body;

(b) the possibility of such an increase is expressly provided for in the original notice;

(c) the scope for the increase can be determined on the basis of clear criteria; and

(d) the increase is by agreement.

Or. de

Amendment 830
Vicente Miguel Garcés Ramón

Proposal for a directive
Article 31 – paragraph 2 – subparagraph 4

Text proposed by the Commission

Contracting authorities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

Amendment

Contracting authorities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition, ***and must provide a justification for the introduction into the specifications of relevant clauses to ensure that there is clarity regarding their interpretation.***

Or. es

Amendment 831
Pablo Arias Echeverría

Proposal for a directive
Article 31 – paragraph 2 – subparagraph 4

Text proposed by the Commission

Contracting authorities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort

Amendment

Contracting authorities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort

competition.

competition, *and must provide a justification for the introduction into the specifications of relevant clauses to ensure that there is clarity regarding their interpretation.*

Or. es

Amendment 832

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 31 – paragraph 3

Text proposed by the Commission

Amendment

3. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement.

deleted

For the award of those contracts, contracting authorities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

Or. en

Amendment 833

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 31 – paragraph 4

Text proposed by the Commission

Amendment

4. Where a framework agreement is concluded with more than one economic operator, it may be performed in one of the two following ways:

deleted

(a) following the terms and conditions of the framework agreement, without

reopening competition, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for determining which of the economic operators, party to the framework agreement, shall perform them; the latter conditions shall be indicated in the procurement documents;

(b) where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, through reopening competition amongst the economic operators parties to the framework agreement.

Or. en

Amendment 834

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 31 – paragraph 4 – point a a (new)

Text proposed by the Commission

Amendment

(aa) partly without reopening of competition in accordance with point (a) where the framework agreement sets out all the terms governing the provision of the works, services and supplies concerned; and partly with reopening of competition amongst the economic operators parties to the framework agreement in accordance with point (b), regardless of whether the framework agreement sets out all the terms governing the provision of the works, services and supplies concerned.

A framework agreement may be performed in accordance with this point only where this possibility has been stipulated by the contracting authority in the procurement documents. Where all the terms governing their provision are set

out in the framework agreement, the choice of whether specific works, supplies or services shall be acquired following a reopening of competition or directly on the terms set out in the framework agreement, shall be made pursuant to objective criteria, which shall be set out in the specifications of the framework agreement. The specifications of the framework agreement shall also specify which terms may be subject to reopening of competition.

Or. en

Justification

This Amendment is a necessary adaptation to the rules for frameworks to ensure innovative contracting authorities' existing arrangements are not adversely affected.

Amendment 835

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 31 – paragraph 5

Text proposed by the Commission

Amendment

5. The competition referred to in paragraph (4)(b) shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:

deleted

(a) for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;

(b) contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors

such as the complexity of the subject-matter of the contract and the time needed to send in tenders;

(c) tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;

(d) contracting authorities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

Or. en

Amendment 836

Vicente Miguel Garcés Ramón

Proposal for a directive

Article 31 – paragraph 5 – point b

Text proposed by the Commission

(b) contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;

Amendment

(b) contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders. ***If tenderers are required to attend site visits before being able to submit a tender, the time limit shall be greater than 15 working days;***

Or. es

Amendment 837

Pablo Arias Echeverría

Proposal for a directive

Article 31 – paragraph 5 – point b

Text proposed by the Commission

(b) contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;

Amendment

(b) contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders. ***If tenderers are required to attend site visits before being able to submit a tender, the time limit shall be greater than 15 working days;***

Or. es

Amendment 838

Vicente Miguel Garcés Ramón

Proposal for a directive

Article 31 – paragraph 5 – point d a (new)

Text proposed by the Commission

Amendment

(da) Contracting authorities shall take into account compliance with labour law in procurement procedures for services which involve the substitution of staff and which are in economic sectors deemed labour intensive and to offer low added value; tenders for a price which involves labour costs which are lower than wages set out in collective bargaining agreements or the applicable legal minimum wage shall be considered abnormal and disproportionate.

Or. es

Amendment 839

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 31 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. Contracting authorities have the possibility to add new economic operators to the framework agreement during the term of the contract, provided that these economic operators meet all the criteria set in this article, and did not exist yet at the time of the conclusion of the agreement.

Contracting authorities have the possibility to remove economic operators from the framework agreement during the term of the contract, where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under the agreement.

Or. en

Amendment 840
Othmar Karas

Proposal for a directive
Article 32 – paragraph 1

Text proposed by the Commission

Amendment

1. For commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities, contracting authorities may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process, open throughout its validity to any economic operator that satisfies the selection criteria.

1. For commonly used ***standard goods and services*** purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities, contracting authorities may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process, open throughout its validity to any economic operator that satisfies the selection criteria.

Or. de

Amendment 841
Cornelis de Jong

Proposal for a directive
Article 32 – paragraph 1

Text proposed by the Commission

1. For commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the contracting authorities, contracting authorities may use a dynamic purchasing system. The dynamic purchasing system shall be operated as a completely electronic process, open throughout its validity to any economic operator that satisfies the selection criteria.

Amendment

1. For commonly used purchases the characteristics of which, as generally available on the market **and at a more or less standardised quality**, meet the requirements of the contracting authorities, contracting authorities may use a dynamic purchasing system. ***This system cannot be used for the purchase of services and complex or non standardised products.*** The dynamic purchasing system shall be operated as a completely electronic process, open throughout its validity to any economic operator that satisfies the selection criteria.

Or. en

Amendment 842
Othmar Karas

Proposal for a directive
Article 32 – paragraph 2

Text proposed by the Commission

2. In order to award contracts under a dynamic purchasing system, contracting authorities shall follow the rules of the restricted procedure. All the candidates satisfying the selection criteria shall be admitted to the system; the number of candidates to be admitted to the system shall not be limited in accordance with Article 64. All communications in the context of a dynamic purchasing system shall only be made with electronic means in accordance with Article 19(2) to (6).

Amendment

2. In order to award contracts under a dynamic purchasing system, contracting authorities shall **at all times** follow the rules of the restricted procedure. All the candidates satisfying the selection criteria shall be admitted to the system; the number of candidates to be admitted to the system shall not be limited in accordance with Article 64. All communications in the context of a dynamic purchasing system shall only be made with electronic means in accordance with Article 19(2) to (6).

Or. de

Amendment 843

Othmar Karas

Proposal for a directive

Article 32 – paragraph 3 – point a

Text proposed by the Commission

(a) publish a call for competition ***making it clear that a*** dynamic purchasing system ***is involved***;

Amendment

(a) publish a call for competition ***describing the*** dynamic purchasing system ***and how the procedure operates***;

Or. de

Amendment 844

Othmar Karas

Proposal for a directive

Article 32 – paragraph 3 – point b

Text proposed by the Commission

(b) indicate in the ***specifications*** at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;

Amendment

(b) indicate in the ***dynamic purchasing system terms and conditions*** at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications;

Or. de

Amendment 845

Othmar Karas

Proposal for a directive

Article 32 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Contracting authorities shall give any

Amendment

Contracting authorities shall give any

economic operator, throughout the entire duration of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in paragraph 2. Contracting authorities shall finalise their assessment of such requests according to the selection criteria within **10 working** days following their receipt.

economic operator, throughout the entire duration of the dynamic purchasing system, the possibility of requesting to participate in the system under the conditions referred to in paragraph 2. Contracting authorities shall finalise their assessment of such requests according to the selection criteria within **21 calendar** days **or an appropriate period set by authorities** following their receipt.

Or. de

Amendment 846
Wim van de Camp

Proposal for a directive
Article 32 – paragraph 6 – introductory part

Text proposed by the Commission

6. Contracting authorities shall indicate the duration of the dynamic purchasing system in the call for competition. **They shall notify the Commission of any change in duration, using the following standard forms:**

Amendment

6. Contracting authorities shall indicate the duration of the dynamic purchasing system in the call for competition.

Or. nl

Justification

The Commission introduces reporting requirements which create red tape for contracting authorities and result in detailed regulation.

Amendment 847
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 32 – paragraph 6 – introductory part

Text proposed by the Commission

6. Contracting authorities shall indicate the

Amendment

6. Contracting authorities shall indicate the

duration of the dynamic purchasing system in the call for competition. ***They shall notify the Commission of any change in duration, using the following standard forms:***

duration of the dynamic purchasing system in the call for competition.

Or. en

Amendment 848
Wim van de Camp

Proposal for a directive
Article 32 – paragraph 6 – point a

Text proposed by the Commission

Amendment

(a) where the duration is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;

deleted

Or. nl

Amendment 849
Cornelis de Jong

Proposal for a directive
Article 32 – paragraph 6 – point a

Text proposed by the Commission

Amendment

(a) where the duration is changed without terminating the system, the form used initially for the call for competition for the dynamic purchasing system;

deleted

Or. en

Amendment 850
Wim van de Camp

Proposal for a directive
Article 32 – paragraph 6 – point b

Text proposed by the Commission

Amendment

(b) where the system is terminated, a contract award notice referred to in Article 48.

deleted

Or. nl

**Amendment 851
Cornelis de Jong**

**Proposal for a directive
Article 32 – paragraph 6 – point b**

Text proposed by the Commission

Amendment

(b) where the system is terminated, a contract award notice referred to in Article 48.

deleted

Or. en

**Amendment 852
Othmar Karas**

**Proposal for a directive
Article 32 – paragraph 7**

Text proposed by the Commission

Amendment

7. No charges may be billed to the interested economic operators or to parties to the dynamic purchasing system.

7. No charges may be billed ***during the award procedure*** to the interested economic operators or to parties to the dynamic purchasing system.

Or. de

**Amendment 853
Heide Rühle**

**Proposal for a directive
Article 33 – paragraph 1 – subparagraph 1**

Text proposed by the Commission

Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Amendment

Only for standardised services and supplies, contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Or. en

Amendment 854
Barbara Weiler

Proposal for a directive
Article 33 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Amendment

Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.
The scope for electronic auctions shall be restricted to fully standardised supplies and services.

Or. de

Amendment 855
Sirpa Pietikäinen

Proposal for a directive
Article 33 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Amendment

Contracting authorities may use electronic auctions ***for standardised goods***, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Or. en

Amendment 856
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 33 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Amendment

Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.
Electronic auctions can only be used for commonly used purchases of goods that are generally available on the market at a more or less standardised quality. They cannot be used for the purchase of services or complex or non standardised products.

Or. en

Amendment 857
Marc Tarabella

Proposal for a directive
Article 33 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Amendment

Contracting authorities may use electronic auctions ***to purchase standardised goods only***, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Or. fr

Amendment 858
Andreas Schwab, Frank Engel, Birgit Collin-Langen, Sabine Verheyen, Jürgen Creutzmann

Proposal for a directive
Article 33 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Amendment

For fully standardised supplies and services, contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Or. de

Justification

Electronic auctions may be appropriate for fully standardised supplies and services, but, as a rule, they are unsuitable or indeed counter-productive where award procedures are complex. For works award procedures, they are fundamentally unsuitable.

Amendment 859
Mitro Repo

Proposal for a directive
Article 33 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Amendment

Contracting authorities may use electronic auctions ***for standardised goods***, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

Or. en

Amendment 860
Raffaele Baldassarre, Lara Comi

Proposal for a directive
Article 33 – paragraph 1 – subparagraph 2 – point a (new)

Text proposed by the Commission

Amendment

(a) This Article shall not apply to public works contracts or to the award of architectural or engineering services.

Or. it

Amendment 861
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 33 – paragraph 6 – subparagraph 1

Text proposed by the Commission

Amendment

Where the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tenderer, carried out in accordance with the weighting provided for in the first subparagraph of Article 66(5).

The invitation shall be accompanied by the outcome of a full evaluation of the relevant tenderer, carried out in accordance with the weighting provided for in the first subparagraph of Article 66(5).

Or. en

Amendment 862
Lara Comi, Raffaele Baldassarre

Proposal for a directive
Article 34 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Member States may ***render*** the use of electronic catalogues ***mandatory*** in connection with ***certain types of procurement***.

Member States may ***provide for*** the use of electronic catalogues in connection with ***public service and supply contracts. This Article shall not apply to public works contracts or to the award of architectural or engineering services.***

Or. it

Amendment 863
Toine Manders

Proposal for a directive
Article 34 a (new)

Text proposed by the Commission

Amendment

Article 34 a

Central website for electronic tendering

In the interests of transparency, contracting authorities may publish information about the works which have been carried out, etc., on a central website established for the purpose, specifying amounts, quantities and the like, so that other contracting authorities can compare what has been paid for comparable works, etc., and base their invitations to tender on this information, which could cut costs and show up major discrepancies in the prices of contracts, making it easier to detect any fraud.

Or. nl

Amendment 864

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski

Proposal for a directive
Article 35 – paragraph 1

Text proposed by the Commission

Amendment

1. ***Contracting*** authorities may purchase works, supplies and/or services from or through a central purchasing body.

1. ***Member States may stipulate that contracting*** authorities may purchase works, supplies and/or services from or through a central purchasing body.

Or. en

Justification

Member States should have a possibility to allow contracting authorities use services of central purchasing body, but they should not be obligated to do so. Central purchasing is one of the procurement methods that leads to aggregation of demand which could be unfavourable for SMEs. Thus, Member States should be allowed to decide whether to develop centralised procurement methods or not, depending on their national policy.

Amendment 865

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 35 – paragraph 1

Text proposed by the Commission

1. Contracting authorities may purchase works, supplies and/or services from or through a central purchasing body.

Amendment

1. Contracting authorities may purchase works, supplies and/or services from or through a central purchasing body.
Member States shall encourage the use of centralised procurement auctioning procedures, especially where procurers are of a small size.

Or. it

Amendment 866

Sirpa Pietikäinen

Proposal for a directive

Article 35 – paragraph 1

Text proposed by the Commission

1. Contracting authorities may purchase works, supplies and/or services from or through a central purchasing body.

Amendment

1. Contracting authorities may purchase works, supplies and/or services from or through a central purchasing body,
provided that the aggregation of tenders to a bigger lots do not prevent genuine competition and do not enable the emergence of oligo- and monopolies or de facto prevent end users' right to have a choice. Central purchasing body has to ensure that in all of its activities it will;
1) detect and prevent contracts with a risk

of advancing monopolistic and oligopolistic structures and markets;

2) prevent factually and effectively procurement contracts and processes that undermine SMEs' and local businesses' possibilities to participate and win the contracts

3) not prevent the end users' right to have a choice and to be heard

Or. en

Amendment 867
Sirpa Pietikäinen

Proposal for a directive
Article 35 – paragraph 2

Text proposed by the Commission

2. Member States shall provide for the possibility for contracting authorities to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.

Amendment

deleted

Or. en

Amendment 868
Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 35 – paragraph 2

Text proposed by the Commission

2. Member States *shall* provide for the possibility for contracting authorities to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.

Amendment

2. Member States *may also* provide for the possibility for contracting authorities to have recourse to centralised purchasing activities offered by central purchasing bodies established in another Member State.

Justification

Member States should have a possibility to allow contracting authorities use services of central purchasing body established in another Member State, but they should not be obligated to do so. In some Member States option provided for in art. 35.2 of the Commission's proposal may cause problems in national legislation (i.e. it could not be possible for contracting authorities to be subject of legal provisions of other Member State, in particular with regard to regulations governing review procedures).

Amendment 869
Marc Tarabella

Proposal for a directive
Article 35 – paragraph 3 – subparagraph 1

Text proposed by the Commission

A contracting authority fulfils its obligations pursuant to this Directive when it procures by having recourse to centralised purchasing activities, to the extent that the procurement procedures concerned and their performance are conducted by the central procurement body **alone** in all its stages from the publication of the call for competition to the end of the execution of the ensuing contract or contracts.

Amendment

A contracting authority fulfils its obligations pursuant to this Directive when it procures by having recourse to centralised purchasing activities, to the extent that the procurement procedures concerned and their performance are conducted by the central procurement body in all its stages from the publication of the call for competition to the end of the execution of the ensuing contract or contracts.

Or. fr

Amendment 870
Heide Rühle

Proposal for a directive
Article 36

Text proposed by the Commission

Article 36
Ancillary purchasing activities

*Amendment***deleted**

The providers of ancillary purchasing activities shall be chosen in accordance with the procurement procedures set out in this Directive.

Or. en

Amendment 871
Heide Rühle

Proposal for a directive
Article 37 – paragraph 1

Text proposed by the Commission

1. **One** or more contracting authorities may agree to perform certain specific procurements jointly.

Amendment

1. **Two** or more contracting authorities may agree to perform certain specific procurements jointly.

Or. en

Amendment 872
Heide Rühle

Proposal for a directive
Article 37 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Where **one contracting authority alone conducts** the procurement **procedures concerned in all its stages from the publication of the call for competition to the end of the performance of the ensuing contract or contracts, that contracting authority shall have sole responsibility** for fulfilling the obligations pursuant to this Directive.

Amendment

Where the **conduct of a procurement procedure in its entirety is carried out jointly by the contracting authorities concerned, they shall be jointly responsible** for fulfilling the obligations pursuant to this Directive. **Contracting authorities shall be deemed to conduct an award procedure jointly where one contracting authority manages the procedure on both its own behalf and on that of the other contracting authorities concerned.**

Or. en

Amendment 873
Heide Rühle

Proposal for a directive
Article 37 – paragraph 2 – subparagraph 2

Text proposed by the Commission

However, where the conduct of the procurement procedures *and the performance of the ensuing contracts* is carried out by *more than one of the participating* contracting authorities, each shall *continue to* be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts.

Amendment

However, where the conduct of the procurement procedures is *not in its entirety* carried out *jointly* by the contracting authorities *concerned* each shall be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts.

Or. en

Amendment 874
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 38

Text proposed by the Commission

Article 38

Joint procurement between contracting authorities from different Member States

1. Without prejudice to Article 11, contracting authorities from different Member States may jointly award public contracts by using one of the means described in this Article.

2. Several contracting authorities may purchase works, supplies and/or services from or through a central purchasing body located in another Member State. In that case, the procurement procedure shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.

Amendment

deleted

3. Several contracting authorities from different Member States may jointly award a public contract. In that case, the participating contracting authorities shall conclude an agreement that determines

(a) which national provisions shall apply to the procurement procedure.

(b) the internal organisation of the procurement procedure, including the management of the procedure, the sharing of responsibilities, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.

(c) When determining the applicable national law in accordance with point (a), contracting authorities may choose the national provisions of any Member State in which at least one of the participating authorities is located.

4. Where several contracting authorities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) N° 1082/2006 of the European Parliament and of the Council¹ or other entities established under Union law, the participating contracting authorities shall, by a decision of the competent body of the joint legal entity, agree on the applicable national procurement rules of one of the following Member States:

(c) the national provisions of the Member State where the joint legal entity has its registered office;

(d) the national provisions of the Member State where the joint legal entity is carrying out its activities.

(e) This agreement may either apply for an undetermined period, when fixed in

¹ OJ L 210 of 31.7.2006, p. 19

the constitutive act of the joint legal entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.

5. In the absence of an agreement determining the applicable public procurement law, the national legislation governing the contract award shall be determined following the rules set out below:

(a) where the procedure is conducted or managed by one participating contracting authority on behalf of the others, the national provisions of the Member State of that contracting authority shall apply;

(b) where the procedure is not conducted or managed by one participating contracting authority on behalf of the others, and

(i) concerns a works contract, contracting authorities shall apply the national provisions of the Member State where most of the works are located;

(ii) concerns a service or supply contract, contracting authorities shall apply the national provisions of the Member State where the major part of the services or supplies is provided;

(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting authorities shall apply the national provisions of the Member State of the contracting authority which bears the biggest share of the costs.

6. In the absence of an agreement determining the applicable public procurement law under paragraph 4, the national legislation governing procurement procedures conducted by joint legal entities set up by several contracting authorities from different Member States shall be determined

following the following rules:

(f) where the procedure is conducted or managed by the competent organ of the joint legal entity, the national provisions of the Member State where the legal entity has its registered office shall apply.

(g) where the procedure is conducted or managed by a member of the legal entity on behalf of that legal entity, the rules set out in points (a) and (b) of paragraph 5 shall apply.

where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 5, the contracting authorities shall apply the national provisions of the Member State where the legal entity has its registered office.

7. One or more contracting authorities may award individual contracts under a framework agreement concluded by or jointly with a contracting authority located in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting authority or contracting authorities to award the individual contracts.

8. Decisions on the award of public contracts in cross-border public procurement shall be subject to the ordinary review mechanisms available under the national law applicable.

9. In order to enable the effective operation of review mechanisms, Member States shall ensure that the decisions of review bodies within the meaning of Council Directive 89/665/EEC¹ located in other Member States are fully executed in their domestic legal order, where such decisions involve contracting authorities established on their territory participating in the relevant cross-border public procurement procedure.

¹ OJ L 395, 30.12. 1989, p. 33.

Amendment 875
Sirpa Pietikäinen

Proposal for a directive
Article 38

Text proposed by the Commission

Amendment

Article 38

deleted

Joint procurement between contracting authorities from different Member States

1. Without prejudice to Article 11, contracting authorities from different Member States may jointly award public contracts by using one of the means described in this Article.

2. Several contracting authorities may purchase works, supplies and/or services from or through a central purchasing body located in another Member State. In that case, the procurement procedure shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.

3. Several contracting authorities from different Member States may jointly award a public contract. In that case, the participating contracting authorities shall conclude an agreement that determines

(h) which national provisions shall apply to the procurement procedure.

(i) the internal organisation of the procurement procedure, including the management of the procedure, the sharing of responsibilities, the distribution of the works, supplies or services to be procured, and the conclusion of contracts.

(c) When determining the applicable national law in accordance with point (a),

contracting authorities may choose the national provisions of any Member State in which at least one of the participating authorities is located.

4. Where several contracting authorities from different Member States have set up a joint legal entity, including European Groupings of territorial cooperation under Regulation (EC) N° 1082/2006 of the European Parliament and of the Council¹ or other entities established under Union law, the participating contracting authorities shall, by a decision of the competent body of the joint legal entity, agree on the applicable national procurement rules of one of the following Member States:

(j) the national provisions of the Member State where the joint legal entity has its registered office;

(k) the national provisions of the Member State where the joint legal entity is carrying out its activities.

(l) This agreement may either apply for an undetermined period, when fixed in the constitutive act of the joint legal entity, or may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.

5. In the absence of an agreement determining the applicable public procurement law, the national legislation governing the contract award shall be determined following the rules set out below:

(a) where the procedure is conducted or managed by one participating contracting authority on behalf of the others, the national provisions of the Member State of that contracting authority shall apply;

¹ OJ L 210 of 31.7.2006, p. 19

(b) where the procedure is not conducted or managed by one participating contracting authority on behalf of the others, and

(i) concerns a works contract, contracting authorities shall apply the national provisions of the Member State where most of the works are located;

(ii) concerns a service or supply contract, contracting authorities shall apply the national provisions of the Member State where the major part of the services or supplies is provided;

(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting authorities shall apply the national provisions of the Member State of the contracting authority which bears the biggest share of the costs.

6. In the absence of an agreement determining the applicable public procurement law under paragraph 4, the national legislation governing procurement procedures conducted by joint legal entities set up by several contracting authorities from different Member States shall be determined following the following rules:

(m) where the procedure is conducted or managed by the competent organ of the joint legal entity, the national provisions of the Member State where the legal entity has its registered office shall apply.

(n) where the procedure is conducted or managed by a member of the legal entity on behalf of that legal entity, the rules set out in points (a) and (b) of paragraph 5 shall apply.

where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 5, the contracting authorities shall apply the national provisions of the Member State where the

legal entity has its registered office.

7. One or more contracting authorities may award individual contracts under a framework agreement concluded by or jointly with a contracting authority located in another Member State, provided that the framework agreement contains specific provisions enabling the respective contracting authority or contracting authorities to award the individual contracts.

8. Decisions on the award of public contracts in cross-border public procurement shall be subject to the ordinary review mechanisms available under the national law applicable.

9. In order to enable the effective operation of review mechanisms, Member States shall ensure that the decisions of review bodies within the meaning of Council Directive 89/665/EEC¹ located in other Member States are fully executed in their domestic legal order, where such decisions involve contracting authorities established on their territory participating in the relevant cross-border public procurement procedure.

Or. en

Amendment 876

Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 38 – paragraph 1

Text proposed by the Commission

1. Without prejudice to Article 11, contracting authorities from *different* Member States *may jointly* award public *contracts by using one* of the *means described in this Article*.

Amendment

1. Without prejudice to Article 11, *Member States may stipulate that* contracting authorities *may award public contracts jointly with contracting authorities* from *other* Member States *if:*

¹ OJ L 395, 30.12. 1989, p. 33.

(a) joint award *of* public *contract is justified due to cross-border nature* of the *contract*

or;

(b) public contract is co-financed by contracting authorities from different Member States

or;

(c) public contract is of innovative nature

Or. en

Justification

Member States should have a possibility to decide whether contracting authority may award a contract jointly with contracting authorities from other Member States. Moreover, there should be concrete conditions under which a contract may be awarded jointly with contracting authorities from other Member States.

Amendment 877

Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 38 – paragraph 2

Text proposed by the Commission

Amendment

2. Several contracting authorities may purchase works, supplies and/or services from or through a central purchasing body located in another Member State. In that case, the procurement procedure shall be conducted in accordance with the national provisions of the Member State where the central purchasing body is located.

deleted

Or. en

Amendment 878

Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 38 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

Several contracting authorities from different Member States may jointly award a public contract. In *that* case, the participating contracting authorities shall conclude an agreement that determines:

In *the* case *referred to in the paragraph 1*, the participating contracting authorities shall conclude an agreement that determines:

Or. en

Amendment 879
Andreas Schwab

Proposal for a directive
Article 38 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

When determining the applicable national law in accordance with point (a), contracting authorities *may* choose the national provisions of any Member State in which at least one of the participating authorities is located.

When determining the applicable national law in accordance with point (a), contracting authorities *shall* choose the national provisions of any Member State in which at least one of the participating authorities is located.

Or. de

Justification

The possibility for the parties to choose which law is to apply should be tied to the objective necessities of the contract concerned.

Amendment 880
Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 38 – paragraph 5

Text proposed by the Commission

Amendment

5. In the absence of an agreement determining the applicable public

deleted

procurement law, the national legislation governing the contract award shall be determined following the rules set out below:

(a) where the procedure is conducted or managed by one participating contracting authority on behalf of the others, the national provisions of the Member State of that contracting authority shall apply;

(b) where the procedure is not conducted or managed by one participating contracting authority on behalf of the others, and

(i) concerns a works contract, contracting authorities shall apply the national provisions of the Member State where most of the works are located;

(ii) concerns a service or supply contract, contracting authorities shall apply the national provisions of the Member State where the major part of the services or supplies is provided;

(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting authorities shall apply the national provisions of the Member State of the contracting authority which bears the biggest share of the costs.

Or. en

Justification

It is sufficient that contracting authorities shall agree on the applicable national procurement rules. Paragraph 5 is not necessary. Deletion of this paragraph will simplify the Article.

Amendment 881
Heide Rühle

Proposal for a directive
Article 38 – paragraph 5 – point c

Text proposed by the Commission

Amendment

(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b), contracting authorities shall apply the national provisions of the Member State of the contracting authority which bears the biggest share of the costs.

deleted

Or. en

Amendment 882

Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 38 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. Several contracting authorities from different Member States may purchase works, supplies and/or services from or through a central purchasing body located in another Member State, if those Member States provided for the possibility referred to in Article 35 paragraph 2 and all the conditions referred to in the paragraph 1 are fulfilled. In that case, parties shall conclude an agreement that determines which national provisions shall apply to the procurement procedure.

Or. en

Amendment 883

Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 38 – paragraph 6

Text proposed by the Commission

Amendment

6. In the absence of an agreement determining the applicable public

deleted

procurement law under paragraph 4, the national legislation governing procurement procedures conducted by joint legal entities set up by several contracting authorities from different Member States shall be determined following the following rules:

(a) where the procedure is conducted or managed by the competent organ of the joint legal entity, the national provisions of the Member State where the legal entity has its registered office shall apply.

(b) where the procedure is conducted or managed by a member of the legal entity on behalf of that legal entity, the rules set out in points (a) and (b) of paragraph 5 shall apply.

(c) where it is not possible to determine the applicable national law pursuant to points (a) or (b) of paragraph 5, the contracting authorities shall apply the national provisions of the Member State where the legal entity has its registered office.

Or. en

Justification

It is sufficient that contracting authorities shall agree on the applicable national procurement rules. Paragraph 6 is not necessary. Deletion of this paragraph will simplify the Article.

Amendment 884

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 38 – paragraph 7

Text proposed by the Commission

7. One or more contracting authorities may award individual contracts under a framework agreement concluded by or jointly with a contracting authority located in another Member State, provided that the

Amendment

7. Member States may stipulate that one or more contracting authorities may award individual contracts under a framework agreement concluded by or jointly with a contracting authority located in another

framework agreement contains specific provisions enabling the respective contracting authority or contracting authorities to award the individual contracts.

Member State, provided that the framework agreement contains specific provisions enabling the respective contracting authority or contracting authorities to award the individual contracts.

Or. en

Amendment 885

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski

Proposal for a directive

Article 38 – paragraph 9

Text proposed by the Commission

Amendment

9. In order to enable the effective operation of review mechanisms, Member States shall ensure that the decisions of review bodies within the meaning of Council Directive 89/665/EEC³³ located in other Member States are fully executed in their domestic legal order, where such decisions involve contracting authorities established on their territory participating in the relevant cross-border public procurement procedure.

deleted

Or. en

Justification

Such provision may cause problems in practice. It is not clear how Member States should ensure that decisions of review bodies (which are not necessarily of judicial nature) established in other Member States are fully executed in their domestic legal order.

Amendment 886

Sirpa Pietikäinen

Proposal for a directive

Article 39 – paragraph -1 (new)

-1. Before launching the procurement procedures, Member States, together with contracting authorities and political leaders at all relevant levels shall establish a procurement strategy, at all relevant levels - national, regional and local - which meets the priorities of this Directive. Public authorities shall ensure that the strategy is followed and implemented, in line with the priorities of this Directive. The strategies shall ensure that at least the following principles are complied with:

a) procurement authorities together with political leaders at national, regional and local levels shall be key players in defining the principles of the procurement strategies;

b) before a procurement procedure begins, public hearings and consultations with the end users of products and services shall be arranged. The views of the end users shall be documented and taken into account when executing the procurement process;

c) the procurement strategy shall be a political tool and binding document when implementing and executing procurement processes. The priorities and aims of any procurement process may not differ from the strategy.

Or. en

Amendment 887
Heide Rühle

Proposal for a directive
Article 39 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

1. Before launching a procurement

1. Before launching a procurement

procedure, contracting authorities may conduct market consultations in order to assess the structure, capability and capacity of the market **and** to inform economic operators of their procurement plans and requirements.

procedure, contracting authorities may conduct market consultations in order to assess the structure, capability and capacity of the market **and/or** to inform economic operators of their procurement plans and requirements.

Or. en

Amendment 888

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer, Andreas Schwab

Proposal for a directive

Article 39 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Before **launching** a procurement procedure, contracting authorities may conduct market **consultations** in order to assess the structure, capability and capacity of the market **and** to inform economic operators of their procurement plans and requirements.

Amendment

Before **initiating** a procurement procedure, contracting authorities may conduct market **surveys** in order to assess the structure, capability and capacity of the market **or** to inform economic operators of their procurement plans and requirements.

Or. de

Justification

Linguistic clarification: it is the start of an award procedure under procedural law which is the cut-off point rather than, for example, the point when the contracting authority takes an internal decision. 'Market consultations' should be replaced by 'market surveys', since the term 'consultations' might restrict surveys to those involving a dialogue. However, plain and simple inquiries should also be possible, for example, as to whether a particular service is at all available on the market.

Amendment 889

Heide Rühle

Proposal for a directive

Article 39 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

For this purpose, contracting authorities may seek or accept advice from administrative support structures or from third parties or market participants, ***provided that such advice does not have the effect of precluding competition and does not result in a violation of the principles of non-discrimination and transparency.***

For this purpose, contracting authorities may seek or accept advice from administrative support structures or from third parties or market participants.

Or. en

Justification

redundant

Amendment 890
Anja Weisgerber

Proposal for a directive
Article 39 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

For this purpose, contracting authorities may seek or accept advice from administrative support structures or from third parties or market participants, ***provided that such advice does not have the effect of precluding competition and does not result in a violation of the principles of non-discrimination and transparency.***

For this purpose, contracting authorities may seek or accept advice from administrative support structures or from third parties or market participants.

Or. de

Justification

The second half of the sentence should be deleted, since there would be difficulties in applying it in practice. It is virtually incomprehensible what the criteria would be for determining that particular advice precludes competition. Nor is it clear, furthermore, when the contracting authority would make such a judgment (ex ante or ex post). In addition, non-discrimination and transparency are general requirements by which public authorities are bound as it is.

Amendment 891

António Fernando Correia de Campos

Proposal for a directive

Article 39 – paragraph 1 – subparagraph 2

Text proposed by the Commission

For this purpose, contracting authorities may seek or accept advice from administrative support structures or from third parties or market participants, provided that such advice does not have the effect of precluding competition and does not result in a violation of the principles of non-discrimination and transparency.

Amendment

For this purpose, contracting authorities may seek or accept advice from administrative support structures or from third parties or market participants, provided that such advice does not have the effect of precluding competition and does not result in a violation of the principles of non-discrimination and transparency ***or serve to debar any entity consulted from participating in the procurement procedure concerned.***

Or. pt

Amendment 892

Frank Engel, Sirpa Pietikäinen

Proposal for a directive

Article 39 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. .

Amendment

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders.

Contracting authorities shall either be required

(i) to clarify in their invitation to participate in a consultation what information will be considered relevant

and thus may be shared with all potential bidders or

(ii) to set out in detail the rights of and procedures available to consultation participants that allow them to protect confidential information.

The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment

The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Or. en

Justification

Although the measures proposed by the Commission in Article 39(2) provide a necessary balance between the possibility for procurers to conduct market consultations and the assurance for bidders that participation will not lead to exclusion provided that the established provisions are respected, there is a potential practical difficulty in identifying and agreeing with contracting authorities in each case what constitutes “relevant information” to be shared in a preliminary market consultation and what should be kept confidential. Allowing contracting authorities to clearly set out either information that could become relevant for sharing or procedures to protect confidential information will bring more clarity to the different parties and safeguard the interests of economic operators.

Amendment 893 Philippe Juvin

Proposal for a directive Article 39 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Such measures shall include the communication to the other candidates and tenderers of any **relevant** information **exchanged** in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means

Amendment

Such measures shall include the communication to the other candidates and tenderers of any information **supplied by the contracting authority** in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means

to ensure compliance with the duty to observe the principle of equal treatment.

to ensure compliance with the duty to observe the principle of equal treatment.

Or. fr

Justification

Tenderers must be able to receive only information supplied by the contracting authority under the prior market consultation procedure, and not 'exchanged' information, possibly including elements of tenders, which would discriminate against tenderers participating in the prior market consultation procedure.

Amendment 894 Jürgen Creutzmann

Proposal for a directive Article 39 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Amendment

Such measures shall include the communication to the other candidates and tenderers of any relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. ***Contracting authorities shall either (i) clarify in their invitation to participate in a consultation what information will be considered relevant and thus may be shared with all potential bidders or (ii) set out in detail the rights of and procedures available to consultation participants that allow them to protect confidential information.*** The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment.

Or. en

Justification

There is a potential practical difficulty in identifying and agreeing with contracting authorities in each case what constitutes “relevant information” to be shared in a preliminary market consultation and what should be kept confidential. Allowing contracting authorities to clearly set out either information that could become relevant for sharing or procedures to protect confidential information will bring more clarity to the different parties and safeguard the interests of economic operators.

Amendment 895 **Heide Rühle**

Proposal for a directive **Article 40 – paragraph 1 – subparagraph 1**

Text proposed by the Commission

The technical specifications as defined in **point 1 of Annex VIII** shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply.

Amendment

The technical specifications as defined in shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply ***and have to be linked to the subject matter of the contract.***

Or. en

Amendment 896 **Sirpa Pietikäinen**

Proposal for a directive **Article 40 – paragraph 1 – subparagraph 1**

Text proposed by the Commission

The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply.

Amendment

The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply ***in order to achieve the use, sustainability and animal welfare objectives of the contracting authority.***

Or. en

Amendment 897

Morten Løkkegaard, Jürgen Creutzmann, Jens Rohde

Proposal for a directive

Article 40 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the ***characteristics required of a works***, service or supply.

Amendment

The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the ***functionality that a work***, service or supply ***is to deliver***.

Or. en

Amendment 898

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 40 – paragraph 1 – subparagraph 2 - point a and b (new)

Text proposed by the Commission

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.

Amendment

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.

Account must also be taken of the following requirements:

(a) social criteria such as respect for decent working conditions, health and safety regulation, collective bargaining, gender balance (e.g. equal pay, work-life balance), social inclusion, including employment opportunities for disabled, disadvantaged or vulnerable workers (such as long-term unemployed persons, Roma, migrants or younger and older workers), access to vocational training, user involvement and consultation, affordability, human rights and ethical trade;

(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of staff assigned to performing the contract.

Or. de

Amendment 899
Heide Rühle

Proposal for a directive
Article 40 – paragraph 1 – subparagraph 2

Text proposed by the Commission

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle *as referred to in point (22) of Article 2.*

Amendment

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle.

Or. en

Amendment 900
Marc Tarabella

Proposal for a directive
Article 40 – paragraph 1 – subparagraph 2

Text proposed by the Commission

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle *as referred to in point (22) of Article 2.*

Amendment

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle *and socially sustainable production process referred to in points (22), (22a) and (22b) of Article 2.*

Or. fr

Amendment 901
Sirpa Pietikäinen

Proposal for a directive
Article 40 – paragraph 1 – subparagraph 2

Text proposed by the Commission

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.

Amendment

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle ***including socially sustainable and animal welfare sensitive production processes*** as referred to in point (22) of Article 2.

Or. en

Amendment 902
Jürgen Creutzmann

Proposal for a directive
Article 40 – paragraph 1 – subparagraph 2

Text proposed by the Commission

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.

Amendment

These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2, ***provided that they are linked to the subject-matter of the contract and proportionate to the value and objectives of the contract.***

Or. en

Justification

Candidates cannot be required to prove things on which they do not have any access, competency or responsibility up to the whole supply chain. For these reasons, technical specifications must remain strictly linked to the subject-matter of the contract and the requirements must be proportionate to the value and objectives of the contract.

Amendment 903
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 40 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Obligations relating to social and employment conditions, such as health and safety at workplace, social security and working conditions as set out by EU and national laws, regulations or administrative provisions, arbitration award, collective agreement and contracts, and international labour law provisions listed in Annex XI, that apply in the place where the work, service or supply is performed, shall be clearly set out by contracting authorities in the technical specifications as part of the absolute requirements for the tendering of the contract.

Or. de

Amendment 904
Vicente Miguel Garcés Ramón

Proposal for a directive
Article 40 – paragraph 1 – subparagraph 4

Text proposed by the Commission

Amendment

For all procurement the subject of which is intended for use by persons, whether general public or staff of the contracting authority, those technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.

For all procurement the subject of which is intended for use by persons, whether general public or staff of the contracting authority, those technical specifications shall, except in duly justified **exceptional** cases, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.

Or. es

Amendment 905
Catherine Stihler

Proposal for a directive
Article 40 – paragraph 1 – subparagraph 4

Text proposed by the Commission

For all procurement the subject of which is intended for use by persons, whether general public or staff of the contracting authority, those technical specifications shall, *except in duly justified cases*, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.

Amendment

For all procurement the subject of which is intended for use by persons, whether general public or staff of the contracting authority, those technical specifications shall, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.

Or. en

Justification

The United Nations Convention on the Rights of Persons with Disabilities came into force in the European Union in January 2011. Article 4 (d) of the Convention specifies that State Parties should refrain from engaging in any act or practice that is inconsistent with the Convention and ensure that public authorities and institutions act in conformity with the Convention. Articles 4, 9, and articles 19 to 30 of the Convention are very clear about general and specific obligations regarding equal access for disabled people and set out obligations of parties in relation to accessibility. There are no exceptions to these principles in the Convention.

Amendment 906
Sirpa Pietikäinen

Proposal for a directive
Article 40 – paragraph 1 – subparagraph 4 a (new)

Text proposed by the Commission

Amendment

Technical specifications may also include, as appropriate, requirements relating to:

(a) performance, including levels of environmental and climate performance and performance in terms of social impact;

(b) life cycle characteristics;

(c) the organisation, qualification and experience of the staff assigned to performing the contract in question;

(d) safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions;

(e) rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve.

f) promotion of innovative goods and services by tendering for solutions for problems, instead of specifically defined goods and services;

Or. en

Amendment 907
Alexander Alvaro, Jürgen Creutzmann

Proposal for a directive
Article 40 – paragraph 1 – subparagraph 4 a (new)

Text proposed by the Commission

Amendment

For all procurement, technical specifications shall be drawn up so as to ensure that the products, services and works subject to the contract meet the requirements of data protection law at the time of the design of the processing of personal data (data protection by design).

Or. en

Amendment 908

Heide Rühle

Proposal for a directive

Article 40 – paragraph 1 – subparagraph 5

Text proposed by the Commission

Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria are concerned, be defined by reference thereto.

Amendment

Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria **for persons with disabilities or design for all users** are concerned, be defined by reference thereto.

Or. en

Amendment 909

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 40 – paragraph 1 – subparagraph 5

Text proposed by the Commission

Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria are concerned, be defined by reference thereto.

Amendment

Where mandatory accessibility, **environmental or social** standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility, **environmental or social** criteria are concerned, be defined by reference thereto.

Or. en

Amendment 910

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 40 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1. Technical specifications may also include requirements relating to:

a) Employment conditions, organisation, qualification and experience of staff assigned to performing the contract in question;

Or. en

Amendment 911
Sirpa Pietikäinen

Proposal for a directive
Article 40 – paragraph 2

Text proposed by the Commission

2. Technical specifications shall guarantee equal access of economic operators to the procurement procedure and not have the effect of creating unjustified obstacles to the *opening up* of public procurement to competition.

Amendment

2. Technical specifications shall guarantee equal access of economic operators to the procurement procedure and not have the effect of creating unjustified obstacles to the *opening-up* of public procurement to competition. ***Technical specifications shall be drawn up in such a way as to ensure that success in the tender procedure or any other procurement procedure will not rest solely or mainly on competition in terms of employees' job security or working conditions.***

Or. fi

Amendment 912
Mitro Repo

Proposal for a directive
Article 40 – paragraph 2

Text proposed by the Commission

2. Technical specifications shall guarantee equal access of economic operators to the procurement procedure and not have the effect of creating unjustified obstacles to the *opening up* of public procurement to competition.

Amendment

2. Technical specifications shall guarantee equal access of economic operators to the procurement procedure and not have the effect of creating unjustified obstacles to the *opening-up* of public procurement to competition.

Technical specifications shall ensure that public procurement is not based solely on competition hinging on the poorest staff working conditions or workforce job cuts.

Or. fi

Amendment 913
Heide Rühle

Proposal for a directive
Article 40 – paragraph 3 – point a

Text proposed by the Commission

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

Amendment

(a) in terms of performance or functional requirements, including environmental **and social** characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

Or. en

Amendment 914
Evelyne Gebhardt

Proposal for a directive
Article 40 – paragraph 3 – point a

Text proposed by the Commission

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

Amendment

(a) in terms of performance or functional requirements, including environmental characteristics **and social characteristics**, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract, **including, in accordance with paragraph 1, requirements relating to life cycle characteristics of the requested works, supplies and services, as referred to in**

point (22a new) of Article 2;

Or. de

Amendment 915
Sirpa Pietikäinen

Proposal for a directive
Article 40 – paragraph 3 – point a

Text proposed by the Commission

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

Amendment

(a) in terms of performance or functional requirements, including *social, environmental and animal welfare* characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

Or. en

Amendment 916
Toine Manders

Proposal for a directive
Article 40 – paragraph 3 – point a

Text proposed by the Commission

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

Amendment

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting entities to award the contract. *The performance and functional requirements should be so formulated that all tenderers who meet equivalent or comparable requirements have access to the procurement. If the contracting authority refuses a tender on the grounds that it is not equivalent or comparable, the*

contracting authorities should provide the tenderer with evidence hereof.

Or. nl

Amendment 917
Heide Rühle

Proposal for a directive
Article 40 – paragraph 3 – point b

Text proposed by the Commission

(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European ***technical approvals***, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or when those do not exist national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;

Amendment

(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European ***Technical Assessment***, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or when ***any of*** those do not exist national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;

Or. en

Amendment 918
Wim van de Camp

Proposal for a directive
Article 40 – paragraph 3 – point b

Text proposed by the Commission

(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference

Amendment

(b) by reference to technical specifications and, in order of preference, ***and without discrimination as to development method,*** to national standards transposing European standards, European technical approvals, common technical specifications,

systems established by the European standardisation bodies or when those do not exist national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;

international standards, other technical reference systems established by the European standardisation bodies or when those do not exist national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;

Or. en

Amendment 919

Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

Proposal for a directive

Article 40 – paragraph 3 – point b

Text proposed by the Commission

(b) by reference to technical specifications and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or when those do not exist national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;

Amendment

(b) by reference to technical specifications and, in order of preference, ***and without discrimination as to development method, to*** national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or when those do not exist national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;

Or. en

Justification

Technical specifications should be non-discriminatory and technology neutral. These fundamental principles should apply equally to the use of standards and specifications in procurement. Non-discriminatory, technology neutral specifications require economic operators to compete to produce the best solutions, which drives innovation and economic

growth. Technology neutrality also ensures that authorities can pick from the widest range of products and services, promoting best value for money.

Amendment 920
Mitro Repo

Proposal for a directive
Article 40 – paragraph 3 – point d a (new)

Text proposed by the Commission

Amendment

(da) the quality criteria to be treated as equivalent to standards and any other technical reference system shall also be deemed to include the collective labour agreements applying in the country, region, and sector in which the procurement is to be carried out.

Or. fi

Amendment 921
Heide Rühle

Proposal for a directive
Article 40 – paragraph 4

Text proposed by the Commission

Amendment

4. ***Unless*** justified by the subject-matter of the contract, technical specifications ***shall not*** refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production ***with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible.*** Such reference shall be accompanied by the words ‘or equivalent’.

4. ***When*** justified by the subject-matter of the contract, technical specifications ***may*** refer to a specific make or source, or a particular process ***which characterises the products or services***, or to trade marks, patents, types or a specific origin or production. Such reference shall be accompanied by the words ‘or equivalent’.

Or. en

Amendment 922
Wim van de Camp

Proposal for a directive
Article 40 – paragraph 4

Text proposed by the Commission

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words ‘or equivalent’.

Amendment

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or ***development or business model or method, or*** to trade marks, patents, types or a specific origin or production ***or location of production,*** with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words ‘or equivalent’.

Or. en

Amendment 923
Malcolm Harbour, Edvard Kožušník, Jürgen Creutzmann

Proposal for a directive
Article 40 – paragraph 4

Text proposed by the Commission

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production ***with*** the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible

Amendment

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process ***or development or business model or method,*** or to trade marks, patents, types or a specific origin or production ***or location of production, as any such reference would have*** the effect of favouring or eliminating certain undertakings or certain products. Such

description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words 'or equivalent'.

reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall *systematically* be accompanied by the words "or equivalent".

Or. en

Justification

To promote innovation and economic growth, it is essential that all tenderers compete on an equal footing. Discrimination, including on technology or location of production should only be allowed in very exceptional circumstances. Any preferences, whether for certain technologies, business models, vendors or product origins, stifle innovation and competition with the effect that public bodies cannot select solutions that best match the needs of a given procurement.

Amendment 924

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 40 – paragraph 4

Text proposed by the Commission

4. *Unless* justified by the subject-matter of the contract, technical specifications *shall not* refer to a specific make or source, or a particular process, *or to trade marks, patents*, types or a specific origin or production *with the effect of favouring or eliminating certain undertakings or certain products*. Such reference shall be *permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be* accompanied by the words 'or equivalent'.

Amendment

4. *On an exceptional basis, and only when* justified by the subject-matter of the contract, technical specifications *may* refer to a specific make or source, or a particular process, types or a specific origin or production. Such reference shall be accompanied by the words 'or equivalent'.

Or. en

Amendment 925
Philippe Juvin

Proposal for a directive
Article 40 – paragraph 4

Text proposed by the Commission

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words "or equivalent".

Amendment

4. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products.

Such reference shall be permitted on an exceptional basis:

(a) where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible. Such reference shall be accompanied by the words ‘or equivalent’;

(b) where this is warranted by the contract and the reference relates to the production or process location on European Union territory.

Or. fr

Justification

Where warranted by the contract, providing details of production or process location on European Union territory must remain possible.

Amendment 926
Heide Rühle

Proposal for a directive
Article 40 – paragraph 5

Text proposed by the Commission

5. Where a contracting authority uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender by **whatever** appropriate means, including the means of proof referred to in Article 42, that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

Amendment

5. Where a contracting authority uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender by appropriate means, including the means of proof referred to in Article 42, that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

Or. en

Justification

To limit the burden on Contracting Authorities and in order not to discriminate those tenderer who invest time and money for certificates or test reports, the burden for providing equivalence should be placed on the tenderer claiming equivalence.

Amendment 927
Morten Løkkegaard, Jürgen Creutzmann, Jens Rohde

Proposal for a directive
Article 40 – paragraph 6 – subparagraph 1

Text proposed by the Commission

Where a contracting authority uses the option laid down in point (a) of paragraph 3 to formulate technical specifications **in terms of** performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a

Amendment

Where a contracting authority uses the option laid down in point (a) of paragraph 3 to formulate technical specifications **based on** performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a

European standardisation body, where those specifications address the performance or functional requirements which it has laid down.

European standardisation body, where those specifications address the performance or functional requirements which it has laid down.

Or. en

Amendment 928
Heide Rühle

Proposal for a directive
Article 40 – paragraph 6 – subparagraph 2

Text proposed by the Commission

In its tender, the tenderer shall prove by **any** appropriate means, including those referred to in Article 42, that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

Amendment

In its tender, the tenderer shall prove by appropriate means, including those referred to in Article 42, that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

Or. en

Amendment 929
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 40 – paragraph 6 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Contracting authorities must be able to control and follow up that the requirements are fulfilled, during the tendering process as well as during the performance of the contract.

Or. en

Amendment 930
Heide Rühle

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Where contracting authorities lay down environmental, social or other **characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3)** they may require that these works, services or supplies **bear a specific label**, provided that all of the following conditions are fulfilled:

Amendment

Where contracting authorities lay down **in the technical specifications, the award criteria or the contract performance clauses** environmental, social or other requirements **or criteria**, they may require **a specific label as means of proof** that these works, services or supplies **correspond to such requirements or criteria**, provided that all of the following conditions are fulfilled:

Or. en

Amendment 931

Sirpa Pietikäinen

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Where contracting authorities lay down environmental, social or other characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, provided that all of the following conditions are fulfilled:

Amendment

Where contracting authorities lay down environmental, social or other characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, **certificate or other assurance scheme**, provided that all of the following conditions are fulfilled:

Or. en

Amendment 932

Morten Løkkegaard, Jens Rohde

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

Where contracting authorities lay down environmental, ***social or other*** characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, provided that all of the following conditions are fulfilled:

Where contracting authorities lay down environmental characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, provided that all of the following conditions are fulfilled:

Or. en

Amendment 933
Ivo Belet

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

Where contracting authorities lay down environmental, social or other characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, provided that all of the following conditions are fulfilled:

Where contracting authorities lay down environmental, social or other characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, ***certificate or other assurance scheme***, provided that all of the following conditions are fulfilled:

Or. en

Amendment 934
Heide Rühle

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the requirements ***for*** the label only

(a) the requirements ***to be met in order to***

concern **characteristics** which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

obtain the label only concern **criteria** which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

Or. en

Amendment 935
Frank Engel

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the requirements for the label **only concern characteristics which are linked to the subject-matter of the contract and** are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

(a) the requirements for the label are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

Or. fr

Amendment 936
Sirpa Pietikäinen

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the requirements for the label only concern characteristics which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

(a) the requirements for the label, **certificate or other assurance scheme,** only concern characteristics which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

Or. en

Amendment 937

Anna Hedh

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) the requirements for the label only concern characteristics which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

Amendment

(a) the requirements for the label only concern characteristics which are linked to the subject-matter of the contract ***or the production of the subject-matter of the contract*** and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

Or. en

Justification

When limiting the requirements to the characteristics which are linked to the subject-matter of the contract there is no room for labels concerning for example the working environment.

Amendment 938

Ivo Belet

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) the requirements for the label only concern characteristics which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

Amendment

(a) the requirements for the label, ***certificate or other assurance scheme*** only concern characteristics which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

Or. en

Amendment 939

Heide Rühle

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) the requirements for the label are ***drawn up on the basis of scientific information or*** based on ***other*** objectively verifiable and non-discriminatory criteria;

Amendment

(b) the requirements for the label ***to be met in order to obtain the label*** are based on objectively verifiable and non-discriminatory criteria;

Or. en

Amendment 940

Sirpa Pietikäinen

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) the requirements for the label are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;

Amendment

(b) the requirements for the label, ***certificate or other assurance scheme***, are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;

Or. en

Amendment 941

Ivo Belet

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) the requirements for the label are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;

Amendment

(b) the requirements for the label, ***certificate or other assurance scheme*** are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;

Or. en

Amendment 942

Toine Manders

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the rules governing selection are reasonably proportionate to the nature of the contract;

Or. nl

Amendment 943

Heide Rühle

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

(c) the labels are established in an open and transparent procedure in which all ***relevant*** stakeholders, including government bodies, consumers, manufacturers, ***trade unions***, distributors and environmental ***and social*** organisations, ***have a substantial role***. ***Government bodies*** may participate ***but are not obligatory***.

Or. en

Amendment 944

Vicente Miguel Garcés Ramón

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(c) the labels are established in an open and transparent procedure in which all

(c) the labels are established in an open and transparent procedure in which all

stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

stakeholders, including government bodies, consumers, manufacturers, distributors **and** environmental **and social** organisations, may participate,

Or. es

Amendment 945
Sirpa Pietikäinen

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

Amendment

(c) the labels, ***certificate or other assurance scheme***, are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

Or. en

Amendment 946
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

Amendment

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, ***trade unions***, manufacturers, distributors and environmental organisations, may participate,

Or. en

Amendment 947
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

Amendment

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, **trades unions**, distributors and environmental organisations may participate,

Or. en

Amendment 948
Ivo Belet

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

Amendment

(c) the labels, **certificates or other assurance schemes** are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental **and social** organisations, may participate,

Or. en

Amendment 949
Ádám Kósa

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) the labels are established in an open and transparent procedure in which all

Amendment

(c) the labels are established in an open and transparent procedure in which all

stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, may participate,

stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations, **organisations of persons with disabilities**, may participate,

Or. en

Amendment 950
Sirpa Pietikäinen

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 1 – point d

Text proposed by the Commission

Amendment

(d) the labels are accessible to all interested parties;

(d) the labels, **certificate or other assurance scheme**, are accessible to all interested parties;

Or. en

Amendment 951
Ivo Belet

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 1 – point d

Text proposed by the Commission

Amendment

(d) the labels are accessible to all interested parties;

(d) the labels, **certificates or other assurance schemes** are accessible to all interested parties;

Or. en

Amendment 952
Heide Rühle

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission

Amendment

(e) the **criteria of** the label are set by a third party which is independent from the economic operator applying for the label.

(e) the **requirements to be met in order to obtain** the label are set by a third party which is independent from the economic operator applying for the label.

Or. en

Amendment 953
Sirpa Pietikäinen

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission

Amendment

(e) the **criteria** of the label are set by a third party which is independent from the economic operator applying for the label.

(e) the **verification and attribution** of the **compliance with the** label, **certificate or other assurance scheme** are set by a third party which is independent from the economic operator applying for the label, **certificate or other assurance scheme in question**.

Or. en

Amendment 954
Ivo Belet

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission

Amendment

(e) the criteria of the label are set by a third party which is independent from the economic operator applying for the label.

(e) the criteria of the label, **certificate or other assurance scheme** are set by a third party which is independent from the economic operator applying for the label, **certificate or other assurance scheme in question**.

Or. en

Amendment 955

Sari Essayah

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission

(e) the criteria of the label are set by a third party which is independent from the economic operator applying for the label.

Amendment

(e) the criteria of the label are set by a third party ***accredited according to the recognized accreditation standards***, which is independent from the economic operator applying for the label.

Or. en

Amendment 956

Sirpa Pietikäinen

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the label, certificate or other assurance scheme should provide and ensure the highest level of accountability and quality linked to the subject-matter of contract to avoid any misuse of labelling system.

Or. en

Amendment 957

Christel Schaldemose

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Contracting authorities requiring a specific label shall accept all equivalent

For products that do not bear the label, contracting authorities may also accept a

labels that *fulfil* the *requirements of the* label *indicated by the* contracting authorities. For products that do not bear the label, contracting authorities *shall* also accept a technical dossier of the manufacturer or other appropriate means of proof.

technical dossier of the manufacturer or other appropriate means of proof. For products that do not bear the label, contracting authorities *may* also accept a technical dossier of the manufacturer or other appropriate means of proof, *but only from economic operators that do not have access to such certificate, or no possibility of obtaining them within the relevant time limit*.

Or. en

Amendment 958
Christel Schaldemose

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

Amendment

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof *of equivalence*.

Or. en

Amendment 959
Heide Rühle

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities.

Amendment

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the *specific* label indicated by the contracting authorities.

For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

Contracting authorities shall accept other appropriate means of proving such requirements, which may include a technical dossier of the manufacturer where the economic operator concerned has no access to the label, or no possibility of obtaining it within the relevant time limits, provided that the lack of access is not attributable to the economic operator concerned. However in order not to discriminate those tenderers who invest time and money for certificates or test reports, the burden for approving equivalence should be placed on the tenderer claiming equivalence.

Or. en

Amendment 960

Frank Engel, Anna Maria Corazza Bildt

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

Amendment

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof. ***It shall be the responsibility of the tenderer to prove equivalence with the label requested.***

Or. fr

Amendment 961

Vicente Miguel Garcés Ramón

Proposal for a directive

Article 41 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

Amendment

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.
Precedence shall be given to labels, technical dossiers or other means of proof which have been developed, certified or verified with the involvement of governmental bodies, or environmental or social organisations.

Or. es

Amendment 962
Sirpa Pietikäinen

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

Amendment

Contracting authorities requiring a specific label, ***certificate or other assurance scheme*** shall accept all equivalent labels that fulfil the requirements of the label, ***certificate or other assurance scheme*** indicated by the contracting authorities. For products that do not bear the label, ***certificate or other assurance scheme***, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

Or. en

Amendment 963
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities.
For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

Amendment

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities.

Or. en

Amendment 964
Philippe Juvin

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

In requiring a specific label, the contracting authority shall not seek to discriminate against tenderers in a procurement procedure.

Or. fr

Justification

The use of labels in the process of laying down and applying award criteria must not result in discriminatory practices aimed at favouring some bidders over others.

Amendment 965
Ivo Belet

Proposal for a directive
Article 41 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting authorities requiring a specific label shall accept all equivalent labels that fulfil the requirements of the label indicated by the contracting authorities. For products that do not bear the label, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

Amendment

Contracting authorities requiring a specific label, ***certificate and other assurance scheme*** shall accept all equivalent labels that fulfil the requirements of the label, ***certificate and other assurance scheme*** indicated by the contracting authorities. For products that do not bear the label, ***certificate and other assurance scheme***, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof.

Or. en

Amendment 966

Sirpa Pietikäinen

Proposal for a directive

Article 41 – paragraph 2

Text proposed by the Commission

2. Where a label fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to those of the detailed specifications of that label, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Amendment

2. Where a label, ***certificate or other assurance scheme*** fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to those of the detailed specifications of that label, ***certificate or other assurance scheme, or***, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Or. en

Amendment 967

Ivo Belet

Proposal for a directive
Article 41 – paragraph 2

Text proposed by the Commission

2. Where a label fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to those of the detailed specifications of that label, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Amendment

2. Where a label, ***certificate and other assurance scheme*** fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to those of the detailed specifications of that label, ***certificate and other assurance scheme***, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Or. en

Amendment 968
Heide Rühle

Proposal for a directive
Article 42 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting authorities may require that economic operators provide a test report from a recognised body or a certificate issued by such a body as means of proof of conformity with the technical specifications.

Amendment

Contracting authorities may require that economic operators provide a test report from a recognised body or a certificate issued by such a body as means of proof of conformity with ***requirements or criteria set out in*** the technical specifications, ***the award criteria or the contract performance clauses***.

Or. en

Amendment 969
Heide Rühle

Proposal for a directive
Article 42 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Where contracting authorities require the submission of certificates drawn up by **recognised bodies attesting conformity with a particular technical specification**, certificates from equivalent other recognised bodies shall also be accepted by the contracting authorities.

Amendment

Where contracting authorities require the submission of certificates drawn up by **a specific conformity assessment body**, certificates from equivalent other recognised bodies shall also be accepted by the contracting authorities.

Or. en

Amendment 970

Cornelis de Jong, Mikael Gustafsson

**Proposal for a directive
Article 42 – paragraph 2**

Text proposed by the Commission

2. Contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.

Amendment

deleted

Or. en

Amendment 971

Heide Rühle

**Proposal for a directive
Article 42 – paragraph 2**

Text proposed by the Commission

2. Contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer

Amendment

2. Contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer

where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.

where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits, ***provided that the lack of access is not attributable to the economic operator concerned. However to limit the burden on Contracting Authorities and in order not to discriminate those tenderers who invest time and money for certificates or test reports, the burden for providing equivalence should be placed on the tenderer claiming equivalence.***

Or. en

Amendment 972

Morten Løkkegaard, Jürgen Creutzmann, Jens Rohde

Proposal for a directive

Article 42 – paragraph 2

Text proposed by the Commission

2. Contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.

Amendment

2. Contracting authorities shall accept other appropriate ***and equivalent*** means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.

Or. en

Amendment 973

Raffaele Baldassarre, Lara Comi

Proposal for a directive

Article 42 – paragraph 2

Text proposed by the Commission

2. Contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits.

Amendment

2. Contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1, such as a technical dossier of the manufacturer where the economic operator concerned has no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits. ***The means of proof must be supported by non-discriminatory verifiable scientific information.***

Or. it

Amendment 974

Heide Rühle

Proposal for a directive

Article 42 – paragraph 4

Text proposed by the Commission

4. Member States shall make available to other Member States, upon request, any information related to the evidence and documents submitted in accordance with Article 40(6), Article 41 and paragraphs 1, 2 and 3 of this Article ***to prove compliance with technical requirements***. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 88.

Amendment

4. Member States shall make available to other Member States, upon request, any information related to the evidence and documents submitted in accordance with Article 40(6), Article 41 and paragraphs 1, 2 and 3 of this Article. The competent authorities of the Member State of establishment ***of the economic operator*** shall provide this information in accordance with Article 88.

Or. en

Amendment 975

Heide Rühle

Proposal for a directive

Article 43 – paragraph 1

Text proposed by the Commission

1. Contracting authorities **may** authorise tenderers to submit variants. **They** shall indicate in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest whether or not they authorise variants. Variants shall not be **authorised** without such indication.

Amendment

1. Contracting authorities **shall** authorise tenderers to submit variants **as long as they are linked to the subject matter of the contract. If they do not authorise variants, they** shall indicate **this** in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest whether or not they authorise variants. Variants shall not be **rejected** without such indication.

Or. en

Amendment 976

Frank Engel, Andreas Schwab

Proposal for a directive

Article 43 – paragraph 1

Text proposed by the Commission

1. **Contracting authorities may authorise tenderers to** submit variants. **They shall indicate in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest whether or not they authorise variants. Variants shall not be authorised without such indication.**

Amendment

1. **Tenderers** may submit variants **along with a basic proposal.**

Or. fr

Amendment 977

Marc Tarabella

Proposal for a directive

Article 43 – paragraph 1 – subparagraph -1 (new)

Text proposed by the Commission

Amendment

1. A variant shall be an alternative

method of design, execution or funding of the contract.

Or. fr

Amendment 978
Cornelis de Jong

Proposal for a directive
Article 43 – paragraph 1

Text proposed by the Commission

1. Contracting authorities **may authorise** tenderers to submit variants. **They** shall indicate in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest **whether or not they authorise variants**. Variants shall **not** be authorised without such indication.

Amendment

1. Contracting authorities **allow** tenderers to submit variants. **If the contracting authorities do not wish to allow the submission of variants, they** shall indicate **this** in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest. Variants shall be authorised without such indication.

Or. en

Amendment 979
Robert Rochefort

Proposal for a directive
Article 43 – paragraph 1

Text proposed by the Commission

1. Contracting authorities may **authorise** tenderers **to submit** variants. They shall indicate in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest whether or not they **authorise** variants. Variants shall **not** be authorised without such indication.

Amendment

1. Contracting authorities may **prohibit** tenderers **from submitting** variants. They shall indicate in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest whether or not they **prohibit** variants. Variants shall be authorised without such indication.

Or. fr

Amendment 980

Morten Løkkegaard, Jürgen Creutzmann, Jens Rohde

Proposal for a directive

Article 43 – paragraph 1

Text proposed by the Commission

1. Contracting authorities may authorise tenderers to submit variants. They shall **indicate** in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest **whether or not they authorise variants**. Variants shall **not** be authorised without such indication.

Amendment

1. Contracting authorities may authorise tenderers to submit variants. They shall **as a general rule authorise variants unless otherwise stated** in the contract notice or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest. Variants shall be authorised without such indication **to the contrary**.

Or. en

Amendment 981

Heide Rühle

Proposal for a directive

Article 43 – paragraph 2

Text proposed by the Commission

2. Contracting authorities authorising variants shall state in the procurement documents the minimum requirements to be met by the variants **and any specific requirements for their presentation**. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

Amendment

2. Contracting authorities authorising variants shall state in the procurement documents the minimum requirements to be met by the variants. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

Or. en

Amendment 982

Frank Engel, Andreas Schwab

Proposal for a directive
Article 43 – paragraph 2

Text proposed by the Commission

2. Contracting authorities **authorising variants** shall state in the procurement documents the minimum requirements to be met by the variants and any specific requirements for their presentation. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

Amendment

2. Contracting authorities shall state in the procurement documents the minimum requirements to be met by the variants and any specific requirements for their presentation. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

Or. fr

Amendment 983
Robert Rochefort

Proposal for a directive
Article 43 – paragraph 2

Text proposed by the Commission

2. Contracting authorities **authorising variants** shall state in the procurement documents the minimum requirements to be met by the variants and any specific requirements for their presentation. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

Amendment

2. **Where variants are not prohibited**, contracting authorities shall state in the procurement documents the minimum requirements to be met by the variants and any specific requirements for their presentation. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

Or. fr

Amendment 984
Phil Prendergast

Proposal for a directive
Article 43 – paragraph 2

Text proposed by the Commission

Amendment

2. **Contracting authorities authorising variants shall state** in the procurement documents the minimum requirements to be met by the variants and any **specific** requirements for their presentation. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those **minimum** requirements as well as to conforming tenders which are not variants.

2. **Variants may be authorised** in the procurement documents **which define** the minimum requirements to be met by the variants and any requirements for their presentation. **These minimum requirements are mandatory to ensure that the variants will not affect the subject matter of the contract. The contracting authority may reject any variants on the ground that it would affect the subject matter of the contract.** They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those requirements as well as to conforming tenders which are not variants.

Or. en

Amendment 985
Heide Rühle

Proposal for a directive
Article 43 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

Only variants meeting the minimum requirements laid down by the contracting authorities shall be taken into consideration.

deleted

Or. en

Amendment 986
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 43 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

In procedures for awarding public supply

deleted

or service contracts, contracting authorities that have authorised variants shall not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

Or. en

Amendment 987
Heide Rühle

Proposal for a directive
Article 43 – paragraph 3 – subparagraph 2

Text proposed by the Commission

In procedures for awarding public supply or service contracts, contracting authorities *that have authorised variants* shall not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

Amendment

In procedures for awarding public supply or service contracts, contracting authorities shall not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

Or. en

Justification

To encourage innovative products and production methods variants are one of the best instruments there use should be encouraged and not hindered.

Amendment 988
Robert Rochefort

Proposal for a directive
Article 43 – paragraph 3 – subparagraph 2

Text proposed by the Commission

In procedures for awarding public supply

Amendment

In procedures for awarding public supply

or service contracts, contracting authorities that have **authorised** variants shall not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

or service contracts, contracting authorities which have **not prohibited** variants may not reject a variant on the sole ground that it would, if successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

Or. fr

Amendment 989
Christel Schaldemose

Proposal for a directive
Article 44

Text proposed by the Commission

Amendment

Article 44

deleted

Division of contracts into lots

1. Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.

Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders are limited to one or more lots only.

2. Contracting authorities may, even where the possibility to tender for all lots has been indicated, limit the number of lots that may be awarded to a tenderer, provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting authorities shall determine and indicate in the procurement documents the objective

and non-discriminatory criteria or rules for awarding the different lots where the application of the chosen award criteria would result in the award to one tenderer of more lots than the maximum number.

3. Where more than one lot may be awarded to the same tenderer, contracting authorities may provide that they will either award a contract per lot or one or more contracts covering several or all lots.

Contracting authorities shall specify in the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract.

Contracting authorities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 66 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article 66 are better fulfilled with regard to all the lots covered by that contract. Contracting authorities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.

4. Contracting authorities may require that all contractors coordinate their activities under the direction of the economic operator to which has been awarded a lot involving the coordination of the entire project or its relevant parts.

Or. da

Amendment 990
Heide Rühle

Proposal for a directive
Article 44 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Public contracts may be subdivided into homogenous or heterogeneous lots. ***For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.***

Amendment

Public contracts may be subdivided into homogenous or heterogeneous lots. ***Member States shall provide for provisions on the subdivision of contracts into lots at their national level. Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders are limited to one or more lots only.***

Or. en

Justification

The value of a contract is determined by the very nature and scale of the goods, works or services procured. Why a contract is valued above €500,000 will be self-evident according to the subject matter. It is therefore an unnecessary administrative burden, and an exaggerated duty, for contracting authorities to have to explain and give reasons in every larger contract why the contract has a value above €500,000 and has not been disaggregated.

Amendment 991
Frank Engel, Philippe Juvin

Proposal for a directive
Article 44 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, ***where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.***

Amendment

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, the contracting authority shall provide in the contract notice or in the invitation an explanation of its reasons ***for its decision to subdivide or not to subdivide into lots.***

Amendment 992

Andreas Schwab, Anja Weisgerber

Proposal for a directive

Article 44 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Public contracts may be subdivided into homogenous or heterogeneous lots. *For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.*

Amendment

Public contracts may be subdivided into homogenous or heterogeneous lots.

Amendment 993

Marc Tarabella

Proposal for a directive

Article 44 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Public contracts may be subdivided into *homogenous or heterogeneous* lots. *For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.*

Amendment

Public contracts may be subdivided into lots.

Amendment 994

Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, Herbert Dorfmann

Proposal for a directive

Article 44 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Public contracts may be subdivided into **homogenous or heterogeneous** lots. For contracts with a value equal to or greater than **the thresholds provided for in Article 4 but not less than EUR 500 000**, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall **provide** in the contract notice or in the invitation to confirm interest **a specific explanation of its reasons**.

Amendment

Public contracts may be subdivided into lots. For **supply and services** contracts with a value equal to or greater than **EUR 500 000 and for works contracts with a value equal to or greater than EUR 10 000 000** determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall **state that** in the contract notice or in the invitation to confirm interest.

Or. en

Justification

For the sake of simplification there is no need to indicate that the Article refers to contracts with a value equal to or greater than the thresholds indicated in Article 4, as it is obvious. It is sufficient just to indicate concrete thresholds, which should be different for supply and services contracts on the one hand and for works on the other hand, as those thresholds differ traditionally under public procurement directives.

Amendment 995

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 44 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5,

Amendment

To facilitate greater access to public procurement by small and medium-sized enterprise, public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the

where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.

thresholds provided for in Article 4 but not less than EUR 1 000 000, determined in accordance with Article 5, contracting authorities shall provide justification for not *sub-dividing the contract* into lots in the contract notice or in the invitation to confirm interest.

Or. en

Amendment 996
Cornelis de Jong

Proposal for a directive
Article 44 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.

Amendment

With a view to maximising competition, and unless the subject-matter of the contract makes division on the basis of the nature of the services involved impossible, the contracting authority shall award the contract in separate lots. If the contract cannot be split into lots because its subject-matter makes division on the basis of the nature of the services involved impossible, the contracting authority shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.

Or. en

Amendment 997
Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive
Article 44 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater

Amendment

To foster maximum competition, the contracting authority may award a contract in individual lots. Where, on a

than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.

case-by-case basis, there are objective grounds for doing so, the contracting authority may opt not to split a contract into lots.

Or. de

Justification

In the interests of simplification, this needless administrative burden on contracting authorities should be dispensed with.

Amendment 998
Sirpa Pietikäinen, Anneli Jäätteenmäki

Proposal for a directive
Article 44 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Public contracts *may* be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.

Amendment

In order to enhance competition and help SMEs to get to the public procurement, public contracts shall be subdivided into homogenous or heterogeneous lots, when appropriate according to the nature of the contract. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.

Or. en

Amendment 999
Raffaele Baldassarre, Lara Comi

Proposal for a directive
Article 44 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, **where** the contracting authority **does not deem it appropriate to split into lots, it** shall provide in the contract notice or in the invitation to confirm interest a specific explanation of **its** reasons.

Amendment

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, the contracting authority shall provide in the contract notice or in the invitation to confirm interest a specific explanation of **the reasons for its decision to split the contract into lots or otherwise.**

Or. it

Amendment 1000
Jürgen Creutzmann

Proposal for a directive
Article 44 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, **where** the contracting authority **does not deem it appropriate to split into lots, it** shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its **reasons**.

Amendment

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, the contracting authority shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its **decision in favour of or against a division into lots.**

Or. en

Justification

The division of contracts into lots facilitates the participation of SMEs in public procurement and contracting authorities should at least be obliged to consider this option. However, the directive should be more neutral and favour neither the division of contracts into lots nor a

single contract, as the decision has to be taken on a case-by-case basis taking into consideration technical and economic factors.

Amendment 1001
Riikka Manner

Proposal for a directive
Article 44 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Public contracts may be subdivided into homogenous or heterogeneous lots. ***For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.***

Amendment

In order to enhance competition and help SMEs to get to the public procurement, public contracts may be subdivided into homogenous or heterogeneous lots, ***except in the procurement*** where the contracting authority does not deem it appropriate to split into lots.

Or. en

Justification

It is obviously important to encourage the contracting authority to subdivide the contract into lots in order to make it easier to SMEs to participate to public tendering competitions. However, there should not be an obligation to splitting into lots, because then the contracting authority might split into lots an agreement that it should not have split. This is often the case in for example construction and IT contracts.

Amendment 1002
Phil Prendergast

Proposal for a directive
Article 44 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article

Amendment

Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article

4 but not less than EUR 500 000, determined in accordance with Article 5, **where** the contracting authority **does not deem it appropriate to split into lots**, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.

4 but not less than EUR 500,000 determined in accordance with Article 5, the contracting authority shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons **for their decision to divide or not divide the contract into lots, as regards the indissolubility in technical, legal or financial terms. For specific contracts, Member States may define and impose compulsory lots.**

Or. en

Amendment 1003
Marc Tarabella

Proposal for a directive
Article 44 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether **tenders are** limited to one or more lots only.

Amendment

Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether **the contract is** limited to one or more lots only. **They shall be free to set the number of lots, taking account, in particular, of the technical characteristics of the services to be provided, the structure of the economic sector in question and, where appropriate, the rules applicable to certain professions.**

Or. fr

Amendment 1004
Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Herbert Dorfmann

Proposal for a directive
Article 44 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting authorities shall indicate, in

Amendment

Where the contracting authority limits the

the contract notice *or* in the invitation to confirm interest, ***whether tenders are limited to one or more lots only.***

possibility to tender to one or more lots it shall indicate it in the contract notice, in the invitation to confirm interest or ***in the procurement documents.***

Or. en

Justification

It seems to be sufficient to oblige contracting authorities to inform, in the contract notice or in the invitation to confirm interest, about its decision not to split contract into lots. Contracting authorities should not be required to provide specific explanations of its reasons. It is not clear what would be added value of such requirement. The wording of second subparagraph has been adjusted for the sake of clarification.

Amendment 1005

Andreas Schwab, Frank Engel, Birgit Collin-Langen, Sabine Verheyen, Anja Weisgerber

Proposal for a directive Article 44 – paragraph 2

Text proposed by the Commission

Amendment

2. Contracting authorities may, even where the possibility to tender for all lots has been indicated, limit the number of lots that may be awarded to a tenderer, provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting authorities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots where the application of the chosen award criteria would result in the award to one tenderer of more lots than the maximum number.

deleted

Or. en

Justification

Simplification of procurement rules

Amendment 1006
Marc Tarabella

Proposal for a directive
Article 44 – paragraph 2

Text proposed by the Commission

2. Contracting authorities may, even where the possibility to tender for all lots has been indicated, limit the number of lots that may be awarded to a tenderer, provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting authorities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots *where the application of the chosen award criteria would result in the award to one tenderer of more lots than the maximum number.*

Amendment

2. Candidates may not submit different tenders for differing numbers of lots. Contracting authorities shall limit the number of lots that may be awarded to a tenderer, provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting authorities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots.

Or. fr

Amendment 1007

Andreas Schwab, Frank Engel, Birgit Collin-Langen, Sabine Verheyen, Anja Weisgerber

Proposal for a directive
Article 44 – paragraph 3

Text proposed by the Commission

3. Where more than one lot may be awarded to the same tenderer, contracting authorities may provide that they will either award a contract per lot or one or more contracts covering several or all lots.

Contracting authorities shall specify in the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract.

Contracting authorities shall first determine the tenders fulfilling best the

Amendment

deleted

award criteria set out pursuant to Article 66 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article 66 are better fulfilled with regard to all the lots covered by that contract. Contracting authorities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.

Or. en

Justification

Simplification of procurement rules.

Amendment 1008
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 44 – paragraph 3

Text proposed by the Commission

Amendment

3. Where more than one lot may be awarded to the same tenderer, contracting authorities may provide that they will either award a contract per lot or one or more contracts covering several or all lots.

deleted

Contracting authorities shall specify in the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract.

Contracting authorities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 66 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in

the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract.

Or. en

Amendment 1011
Sirpa Pietikäinen, Anna Maria Corazza Bildt

Proposal for a directive
Article 44 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Contracting authorities shall specify in the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract.

Amendment

Contracting authorities shall specify in the procurement documents whether they reserve the right to make such a choice and, if so, which lots may be grouped together under one contract. ***If one contract is awarded it may not restrict competition or lead to monopolisation of the market.***

Or. en

Amendment 1012
Heide Rühle

Proposal for a directive
Article 44 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Contracting authorities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 66 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article 66 are better fulfilled with regard to all the lots covered by that contract. Contracting

Amendment

deleted

authorities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.

Or. en

Justification

The value of a contract is determined by the very nature and scale of the goods, works or services procured. Why a contract is valued above €500,000 will be self-evident according to the subject matter. It is therefore an unnecessary administrative burden, and an exaggerated duty, for contracting authorities to have to explain and give reasons in every larger contract why the contract has a value above €500,000 and has not been disaggregated.

Amendment 1013

Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 44 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

Contracting authorities shall first determine the tenders fulfilling best the award criteria set out pursuant to Article 66 for each individual lot. They may award a contract for more than one lot to a tenderer that is not ranked first in respect of all individual lots covered by this contract, provided that the award criteria set out pursuant to Article 66 are better fulfilled with regard to all the lots covered by that contract. Contracting authorities shall specify the methods they intend to use for such comparison in the procurement documents. Such methods shall be transparent, objective and non-discriminatory.

deleted

Or. en

Amendment 1014

Heide Rühle

Proposal for a directive Article 44 – paragraph 4

Text proposed by the Commission

Amendment

4. Contracting authorities may require that all contractors coordinate their activities under the direction of the economic operator to which has been awarded a lot involving the coordination of the entire project or its relevant parts. *deleted*

Or. en

Justification

The value of a contract is determined by the very nature and scale of the goods, works or services procured. Why a contract is valued above €500,000 will be self-evident according to the subject matter. It is therefore an unnecessary administrative burden, and an exaggerated duty, for contracting authorities to have to explain and give reasons in every larger contract why the contract has a value above €500,000 and has not been disaggregated.

Amendment 1015

Andreas Schwab, Frank Engel, Birgit Collin-Langen, Sabine Verheyen, Anja Weisgerber

Proposal for a directive Article 44 – paragraph 4

Text proposed by the Commission

Amendment

4. Contracting authorities may require that all contractors coordinate their activities under the direction of the economic operator to which has been awarded a lot involving the coordination of the entire project or its relevant parts. *deleted*

Or. en

Justification

Simplification of procurement rules.

Amendment 1016
Cornelis de Jong

Proposal for a directive
Article 46 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

For restricted and competitive procedures with negotiation, *sub-central* contracting authorities may use a prior information notice as a call for competition pursuant to Article 24(2), provided that the notice fulfils all of the following conditions:

Amendment

For restricted and competitive procedures with negotiation, contracting authorities may use a prior information notice as a call for competition pursuant to Article 24(2), provided that the notice fulfils all of the following conditions:

Or. en

Amendment 1017
Cornelis de Jong

Proposal for a directive
Article 46 – paragraph 2 – subparagraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) where the economic operator figures in the register of non-compliance as set up in Article 83a.

Or. en

Amendment 1018
Louis Grech

Proposal for a directive
Article 46 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Member States, where appropriate, should adopt the 'citizen choice model' for public procurement tenders, in particular, with tenders for personal service, such as

housekeeping services for elderly persons. Through this, citizens would be able to decide on a specific operator from bidders that meet the quality criteria, agree to a (maximum) price and are awarded a framework contract by the contracting authority.

Or. en

Amendment 1019

Andreas Schwab, Sirpa Pietikäinen, Jürgen Creutzmann

Proposal for a directive

Article 48 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Not later than **48** days after the award of a contract or the conclusion of a framework agreement, contracting authorities shall send a contract award notice on the results of the procurement procedure.

Amendment

Not later than **14** days after the award of a contract or the conclusion of a framework agreement, contracting authorities shall send a contract award notice on the results of the procurement procedure. ***In case of an incomplete or incoherent contract award notice, the Commission will contact the Contracting Authority with the aim to receive completion or clarification of the contract award notice.***

Or. en

Justification

TED data is not reliable because Contracting Authorities often forget to send contract award notices. By shortening the deadline, this pillar of data gathering would be made more effective. Furthermore, CANs are often incomplete or incoherent and in practice, the Commission does not get back to the Contracting Authorities for clarification. It would therefore be helpful to introduce a clear obligation of the Commission to check data for completeness and coherence.

Amendment 1020

Frank Engel, Andreas Schwab

Proposal for a directive
Article 48 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Not later than 48 days after the award of a contract or the conclusion of a framework agreement, contracting authorities shall send a contract award notice on the results of the procurement procedure.

Amendment

Not later than 48 days after the award of a contract or the conclusion of a framework agreement, contracting authorities shall send a contract award notice on the results of the procurement procedure.

In the case of public contracts for services listed in Annex XVI B, the contracting authorities shall indicate in the notice whether they agree to its publication. For such services contracts the Commission shall draw up the rules for establishing statistical reports on the basis of such notices and for the publication of such reports in accordance with the procedure laid down in Article 91.

Or. en

Justification

Linked to the re-introduction of the distinction of A and B services

Amendment 1021
António Fernando Correia de Campos

Proposal for a directive
Article 48 – paragraph 3

Text proposed by the Commission

3. Contracting authorities shall send a notice of the result of the award of contracts based on a dynamic purchasing system within 48 days of the award of each contract. ***They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 48 days of the end of each quarter.***

Amendment

3. Contracting authorities shall send a notice of the result of the award of contracts based on a dynamic purchasing system within 48 days of the award of each contract.

Or. pt

Amendment 1022
Heide Rühle

Proposal for a directive
Article 50 – paragraph 1

Text proposed by the Commission

Amendment

1. Notices referred to in Articles 46, 47 and 48 and the information contained therein shall not be published at national level before the publication pursuant to Article 49.

deleted

Or. en

Justification

Bureaucratic and unnecessary burden and source of mistakes

Amendment 1023
Heide Rühle

Proposal for a directive
Article 51 – paragraph 1

Text proposed by the Commission

Amendment

1. Contracting authorities shall offer **unrestricted and** full direct access free of charge by electronic means to the procurement documents from the date of publication of the notice in accordance with Article 49 or the date on which the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which this documentation is accessible.

1. Contracting authorities shall offer full direct access free of charge by electronic means to the procurement documents from the date of publication of the notice in accordance with Article 49 or the date on which the invitation to confirm interest is sent. **Contracting authorities may ask under specific circumstances for name, address or other means to identify the tenderer.** The text of the notice or the invitation to confirm interest shall specify the internet address at which this documentation is accessible.

Or. en

Justification

There might be need to prove for example the tenderers data (name, address etc.)

Amendment 1024

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer

Proposal for a directive

Article 51 – paragraph 1

Text proposed by the Commission

1. Contracting authorities shall offer unrestricted and full direct access free of charge by electronic means to the procurement documents from the date of publication of the notice in accordance with Article 49 or the date on which the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which this documentation is accessible.

Amendment

1. Contracting authorities shall offer unrestricted and full direct access free of charge by electronic means to the procurement documents from the date of publication of the notice in accordance with Article 49 or the date on which the invitation to confirm interest is sent. The text of the notice or the invitation to confirm interest shall specify the internet address at which this documentation is accessible. ***Contracting authorities may make access subject to prior submission by an applicant of his name, address, other details or appropriate documents enabling the applicant's identity to be clearly established.***

Or. de

Justification

In connection with security-related contracts, for example, contracting authorities have a justified interest in ascertaining who is requesting tender documents.

Amendment 1025

Pablo Arias Echeverría

Proposal for a directive

Article 51 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This additional information shall be provided to all tenderers taking part in the procurement procedure.

Or. es

Amendment 1026
Marc Tarabella

Proposal for a directive
Article 52 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

In restricted procedures, ***competitive dialogue procedures, innovation partnerships*** and competitive procedures with negotiation, contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders ***or, in the case of a competitive dialogue, to take part in the dialogue.***

In restricted procedures and competitive procedures with negotiation, contracting authorities shall simultaneously and in writing invite the selected candidates to submit their tenders.

Or. fr

Amendment 1027
Anja Weisgerber, Andreas Schwab

Proposal for a directive
Article 52 – paragraph 2

Text proposed by the Commission

Amendment

2. The invitations referred to in paragraph 1 shall include a reference to the electronic address *on* which the specifications or the descriptive document and any other supporting documents ***have been made directly available by electronic means.*** In addition, they shall include the information set out in Annex X.

2. The invitations referred to in paragraph 1 shall include a reference to the electronic address *at* which the specifications or the descriptive document and any other supporting documents ***are accessible to tenderers.*** In addition, they shall include the information set out in Annex X.

Justification

Clarification that it is sufficient to make the information available on the Internet. Informing individual tenderers should not be a requirement. Tenderers must themselves take responsibility for this.

Amendment 1028

Pablo Arias Echeverría

Proposal for a directive

Article 53 – paragraph 2 – introductory part

Text proposed by the Commission

2. On request from the party concerned, the contracting authority shall as quickly as possible, and in any case within 15 days from receipt of a written request, inform:

Amendment

2. The contracting authority shall as quickly as possible ***after the date on which the concession is awarded, or on which the request to participate or the tender is rejected,*** and in any case within 15 days from receipt of a written request, inform:

Or. es

Amendment 1029

Heide Rühle

Proposal for a directive

Article 54 – paragraph 2

Text proposed by the Commission

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where ***they have*** established that the tender does not comply, ***at least in an equivalent manner,*** with obligations established by Union legislation in the field of social and labour law or environmental law or ***of*** the international social and environmental law provisions listed in Annex XI.

Amendment

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where ***it has been*** established that the tender does not comply with obligations established by Union ***or national*** legislation in the field of social and labour law or environmental law or ***collective agreements which apply in the place where the work, service or supply is performed or by the*** international social and environmental law provisions listed in Annex XI ***and provided they are***

linked to the subject matter of the contract.

Or. en

Amendment 1030

Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 54 – paragraph 2

Text proposed by the Commission

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where *they have* established that the tender does not comply, *at least in an equivalent manner*, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

Amendment

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where *it has been* established that the tender does not comply, with obligations established by Union *or national* legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

Or. en

Justification

Art. 54 paragraph 2 refers to the compliance with EU legislation. This formulation is very wide and in this way unclear. Furthermore it is already possible under the existing directive to exclude tenderers who do not act legally. Therefore, this provision is unnecessary. This kind of regulation is superfluous because it is self-evident that both, tenderer and contracting authority, have to respect EU legislation.

Amendment 1031

Alexander Alvaro, Jürgen Creutzmann

Proposal for a directive

Article 54 – paragraph 2

Text proposed by the Commission

2. Contracting authorities may decide not to award a contract to the tenderer

Amendment

2. Contracting authorities may decide not to award a contract to the tenderer

submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law, **data protection law** or environmental law or of the international social and environmental law provisions listed in Annex XI.

Or. en

Amendment 1032

Peter Simon

Proposal for a directive

Article 54 – paragraph 2

Text proposed by the Commission

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where **they have** established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

Amendment

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where **it has been** established that the tender does not comply, at least in an equivalent manner, with obligations established by **national or** Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

Or. de

Amendment 1033

Anna Hedh

Proposal for a directive

Article 54 – paragraph 2

Text proposed by the Commission

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not

Amendment

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not

comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

comply, at least in an equivalent manner, with obligations established by Union legislation **and national laws, regulations and other binding provisions** in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

Or. en

Justification

The reference to regulations in this article is limited to Union legislation in specific regulatory fields. This reference should be extended in such a way that national legislation and systems for regulating the labour market are taken into account.

Amendment 1034 **Sabine Verheyen, Birgit Collin-Langen**

Proposal for a directive **Article 54 – paragraph 2**

Text proposed by the Commission

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where **they have** established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

Amendment

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where **it has been** established that the tender does not comply with obligations established by Union **or national** legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

Or. de

Justification

Tenderers must comply not only with EU legislation, but also with national legislation.

Amendment 1035 **Matteo Salvini, Francesco Enrico Speroni**

Proposal for a directive
Article 54 – paragraph 2

Text proposed by the Commission

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or *of* the international *social and environmental law provisions* listed in Annex XI.

Amendment

2. Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or *with the obligations regarding working conditions along the supply chain as stated in national labour laws and regulations in which production processes take place and in international conventions as listed in Annex XI, whatever the most favourable of workers.*

These provisions include:

(a) those defined by the eight ILO Core Conventions (freedom of association and collective bargaining, forced and compulsory labour, discrimination in respect of employment and occupation, child labour);

(b) occupational safety and health;

(c) working time;

(d) wages and

(e) social security.

Or. en

Amendment 1036
Jürgen Creutzmann

Proposal for a directive
Article 54 – paragraph 2

Text proposed by the Commission

2. Contracting authorities *may decide* not

Amendment

2. Contracting authorities *shall* not award a

to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

contract to the tenderer submitting the best tender where they have established ***based on clear and sufficient evidence*** that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

Or. en

Justification

It should be clear that contracting authorities should not award a contract to a candidate who proves to violate social, labour or environmental law.

Amendment 1037

Marc Tarabella

Proposal for a directive

Article 54 – paragraph 3

Text proposed by the Commission

3. In open procedures, contracting authorities may decide to examine tenders before verifying the fulfilment of the selection criteria, provided that the relevant provisions of this section are observed, including the rule that the contract shall not be awarded to a tenderer that should have been excluded pursuant to Article 55 or that does not meet the selection criteria set out by the contracting authority, in accordance with subsection 1 of this section.

Amendment

deleted

Or. fr

Amendment 1038

Robert Rochefort

Proposal for a directive
Article 54 – paragraph 3

Text proposed by the Commission

3. In open procedures, contracting authorities may decide to examine tenders before verifying the fulfilment of the selection criteria, provided that the relevant provisions of this section are observed, including the rule that the contract shall not be awarded to a tenderer that should have been excluded pursuant to Article 55 or that does not meet the selection criteria set out by the contracting authority, in accordance with subsection 1 of this section.

Amendment

deleted

Or. fr

Amendment 1039
Heide Rühle

Proposal for a directive
Article 54 – paragraph 3

Text proposed by the Commission

3. In open procedures, contracting authorities may decide to examine tenders before verifying the fulfilment of the selection criteria, provided that the relevant provisions of this section are observed, including the rule that the contract shall not be awarded to a tenderer that should have been excluded pursuant to Article 55 or that does not meet the selection criteria set out by the contracting authority, in accordance with subsection *1* of this section.

Amendment

3. In open procedures, contracting authorities may decide to examine tenders before verifying the fulfilment of the selection criteria, provided that the relevant provisions of this section are observed, including the rule that the contract shall not be awarded to a tenderer that should have been excluded pursuant to Article 55 or that does not meet the selection criteria set out by the contracting authority, in accordance with subsection *1-2* of this section.

Or. en

Amendment 1040
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 54 – paragraph 4

Text proposed by the Commission

Amendment

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the list in Annex XI, where necessary due to the conclusion of new international agreements or modification of existing international agreements.

deleted

Or. en

Amendment 1041
Heide Rühle

Proposal for a directive
Article 55 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The obligation to exclude a candidate or tenderer from participation in a public contract shall also apply where the conviction by final judgment has condemned company directors **or any other any persons having powers of representation, decision or control in respect of the candidate or tenderer.**

The obligation to exclude a candidate or tenderer from participation in a public contract shall also apply where the conviction by final judgment has condemned company directors.

Or. en

Justification

Without clear definition this opens the door to misuse and legal disputes

Amendment 1042
Salvatore Iacolino, Marc Tarabella

Proposal for a directive
Article 55 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Where they arise in the course of the procedure to select the contractor, these exclusion grounds shall likewise serve to exclude the company concerned from the contract award procedure.

Or. it

Amendment 1043
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 55 – paragraph 2

Text proposed by the Commission

Amendment

2. Any economic operator shall be excluded from participation in a contract where the contracting authority is aware of a decision having the force of res judicata establishing that it has not fulfilled obligations relating to the payment of taxes or social security contributions ***in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority.***

2. Any economic operator shall be excluded from participation in a contract where the contracting authority is aware of a decision having the force of res judicata establishing that it has not fulfilled obligations relating to the payment of taxes, social security contributions ***or any other obligation relating to social and employment conditions, such as health and safety at workplace, social security and working conditions as set out by EU and national laws, regulations or administrative provisions, arbitration award, collective agreement and contracts, and international labour law provisions listed in Annex XI, that apply in the place where the work, service or supply is performed; these obligations shall also apply in cross-border situations, where workers from one Member State provide services in another Member State.***

Or. de

Amendment 1044
Salvatore Iacolino, Marc Tarabella

Proposal for a directive
Article 55 – paragraph 2

Text proposed by the Commission

2. **Any** economic operator shall be excluded from participation in a contract where ***the contracting authority is aware of a decision having the force of res judicata establishing that*** it has not fulfilled obligations relating to the payment of taxes or social security contributions in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority.

Amendment

2. **An** economic operator shall be excluded from participation in a **public** contract where it has not fulfilled obligations relating to the payment of taxes or social security contributions in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority.

Or. it

Amendment 1045
Raffaele Baldassarre, Lara Comi

Proposal for a directive
Article 55 – paragraph 2

Text proposed by the Commission

2. Any economic operator shall be excluded from participation in a contract where the contracting authority ***is aware of a decision having the force of res judicata establishing that it has not fulfilled*** obligations relating to the payment of taxes ***or social security contributions*** in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority.

Amendment

2. Any economic operator shall be excluded from participation in a contract where:

it has committed conclusively proven serious or repeated infringements of the rules governing social security contributions under the legal provisions of the country in which it is established or under those of the Member State of the contracting authority;

it has committed conclusively proven serious or repeated infringements regarding obligations relating to the payment of taxes in accordance with the legal provisions of the country in which it is established or with those of the Member State of the contracting authority.

Or. it

Amendment 1046

Frank Engel, Wim van de Camp, Anna Maria Corazza Bildt

Proposal for a directive

Article 55 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) where it is aware of any violation of obligations established *by* Union legislation in the field of social and labour law or environmental law or of the international *social and environmental* law provisions listed in Annex XI. *Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.*

Amendment

(a) where it is aware of any *repeated* violation of obligations established *within* Union legislation in the field of social and labour law or environmental law or of the international *labour* law provisions listed in Annex XI, *but limited to the first tier of suppliers.*

Or. en

Amendment 1047

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 55 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international

Amendment

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international

provisions also includes compliance in an equivalent manner.

provisions also includes compliance in an equivalent manner. ***Only violations where the judgement has been administered by a judicial or competent authority in the Union or a signatory to the WTO GPA agreement can be used to exclude bids under this article.***

Or. en

Amendment 1048
Andreas Schwab

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. ***Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.***

Amendment

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI ***and the violation has been established by a competent court as res judicata.***

Or. de

Justification

In the light of the serious legal consequences involved - also in connection with the optional exclusion grounds - violations of social, employment or environmental legislation should be established as res judicata by a court in order to avoid legal uncertainty and arbitrary decisions. The second sentence is unclearly worded and should therefore be deleted so as to avoid legal uncertainty.

Amendment 1049
Alexander Alvaro, Jürgen Creutzmann

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Amendment

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law, ***data protection law*** or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Or. en

Amendment 1050
Peter Simon

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Amendment

(a) where it is aware of any violation of obligations established by national or Union legislation in the field of social and labour law or environmental law ***or of collective agreements such as wage agreements, for example***, or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Or. de

Amendment 1051
Anna Hedh

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Amendment

(a) where it is aware of any violation of obligations established by Union legislation **or national laws, regulations and other binding provisions** in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Or. en

Justification

The reference to regulations in this article is limited to Union legislation in specific regulatory fields. This reference should be extended in such a way that national legislation and systems for regulating the labour market are taken into account.

Amendment 1052

Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 55 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Amendment

(a) where it is aware of any violation of obligations established by Union **and national** legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Or. de

Amendment 1053
Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or *of* the international ***social and environmental law provisions*** listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Amendment

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or ***with the obligations regarding working conditions along the supply chain as stated in national labour laws and regulations in which production processes take place and in international conventions as listed in Annex XI, whatever the most favourable of workers.***

These provisions include:

(a) those defined by the eight ILO Core Conventions (freedom of association and collective bargaining, forced and compulsory labour, discrimination in respect of employment and occupation, child labour);

(b) occupational safety and health;

(c) working time;

(d) wages and

(e) social security.

Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Or. en

Amendment 1054
Catherine Stihler

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) where it is aware of any violation of obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

(a) where it is aware of any violation of obligations established by Union legislation ***or national laws, regulations and other binding provisions*** in the field of ***gender***, social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Or. en

Amendment 1055

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 55 – paragraph 3 – subparagraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) A contracting authority shall exclude from participation in a public contract any economic operator if one of the conditions set out in paragraph 1, 2, 2a (new) and points (c) or (d) of paragraph 3 is fulfilled in respect of a subcontractor proposed by the economic operator in accordance with Article 71.

Or. de

Amendment 1056

Jürgen Creutzmann

Proposal for a directive

Article 55 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) where the economic operator is the

(b) where the economic operator is the

subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, ***where it has entered into an arrangement with creditors***, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;

subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;

Or. en

Justification

The common situation where an economic operator has entered into an arrangement with creditors must not be considered as a ground for exclusion by itself.

Amendment 1057

Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 55 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(c) where the contracting authority can demonstrate by any means that the economic operator is guilty of other grave professional misconduct;

deleted

Or. en

Amendment 1058

Andreas Schwab, Jürgen Creutzmann

Proposal for a directive

Article 55 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(c) where the contracting authority can demonstrate by any means that the economic operator is guilty of other grave professional misconduct;

deleted

Justification

In the light of the serious legal consequences of exclusion from an award procedure - also in connection with the optional exclusion grounds - the wording is too vague. That is particularly so in view of the fact that, in the Commission draft, misconduct can be demonstrated 'by any means'. The concept of "grave professional misconduct" is not defined objectively in the directive, while any decision to exclude an economic operator from a procurement procedure should be based on objective and measurable criteria and the discretion of the contracting authority should be limited.

Justification

Amendment 1059

Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive

Article 55 – paragraph 3 – subparagraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) where the contracting authority can demonstrate by any means that the economic operator is guilty of grave professional misconduct other than indicated in point (a), for instance where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior contract or contracts of a similar nature with the same contracting authority.

Or. en

Justification

Two separate grounds for exclusion in points (c) and (d) could suggest that cases referred to in point (d) do not constitute cases of grave professional misconduct referred to in point (c). For the sake of clarity it is proposed to join grounds for exclusion provided for in points (c) and (d) as a new point (c).

Amendment 1060

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski

Proposal for a directive

Article 55 – paragraph 3 – subparagraph 1 – point d

Text proposed by the Commission

Amendment

(d) where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior contract or contracts of a similar nature with the same contracting authority. **deleted**

Or. en

Amendment 1061

Marc Tarabella

Proposal for a directive

Article 55 – paragraph 3 – subparagraph 1 – point d

Text proposed by the Commission

Amendment

(d) where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior contract or contracts of a similar nature with the same contracting authority.

(d) where the economic operator has shown significant or persistent deficiencies in the performance of any substantive requirement under a prior contract or contracts of a similar nature with the same contracting authority ***or with others.***

Or. fr